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No. 86 1401

In The
Supreme Court of the United States
October Term, 1986

BOBBY GAY BEAZLEY,

Petitioner,

vs.

STATE BAR OF GEORGIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Bobby Gay Beazley, Pro Se
Counsel for Petitioner
1557 Gordon Highway
Suite D
Augusta, Georgia 30906

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTION PRESENTED

I

After one is admitted to the practice of law in a State of the Union, does his right to practice law become a valuable property right protected by the Fourteenth Amendment of the United States Constitution and of which he cannot be deprived absent due process and statutory authority?

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No. .....

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BOBBY GAY BEAZLEY,

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vs.

STATE BAR OF GEORGIA,

Respondent.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

—o—

The petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Georgia entered on November 25, 1986 and the subsequent denial of a timely motion for rehearing on December 18, 1986.

—o—

OPINIONS BELOW

The opinion of the Supreme Court of Georgia entered on November 25, 1986 is included as Appendix C to the instant petition. The decision of the Supreme Court of Georgia denying the petition for rehearing was supposedly entered on without a writing and the available notification is included as Appendix E.

JURISDICTION

The complained about decision was entered on November 25, 1986 and the motion for rehearing was denied on December 18, 1986. The jurisdiction of the court is invoked under 28 U.S.C. § 1254(1) and petitioners petition is timely.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The United States Constitution, Section I, Fourteenth Amendment:

Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, and property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Petitioner was admitted to the practice of law in the State of Georgia in May of 1969. In 1978, petitioner came on information of utmost importance to the judiciary and government as a whole. Employees of the State Bar of Georgia, which is an arm of the Georgia Supreme Court, declined to examine or investigate petitioner's findings on the ground said office was absent authority to do so (T-14). Petitioner filed 34 page report with said association office to lure an investigation. The report was signed by a notary to lure investigation; however, petitioner was not sworn as to the facts contained in the report and in fact a third party signed the report using petitioner's name. At that time and at present, State Bar Rule 1-202 provided for active and inactive members of the Bar and no method of voluntary resignation existed as is the rule in most states. Nevertheless, as a further ploy to obtain inquiry from the Association office and some sort of review, it was stated in the report that petitioner was resigning from the Bar. Petitioner had no intent to resign his membership in the Bar and assumed the resignation language might give the State Bar jurisdiction to intervene with a special master proceeding which was customary in most states when one presumably wanted to depart the State Bar. The report was mailed on June 22, 1978. On June 23, 1978, petitioner telephoned the Bar office and spoke with an employee acquaintance named Bob Davis and informed Mr. Davis that the report was an effort to obtain an investigation. Mr. Davis related that it was too late and discussions had already commenced with the Superior Court of Richmond County, Georgia which was petitioner's home county. Petitioner assumed that the first phase of an investigative ef-

fort was underway. Later, petitioner discovered that employees of the Bar office, acting without any legal authority whatever, removed petitioner's name from the State Bar membership rolls on June 23, 1978. In Georgia, one has to be a member of the State Bar of Georgia Association in order to practice law. Thereafter, proposing to represent appellee in a legal proceeding, said employees prepared a petition for voluntary resignation from the association and forwarded same to a Superior Court Judge in Richmond County, Georgia (T-24), (R-3-4). The State Bar Association was not a party to this petition (T-10), (T-14), (T-24), (T-25), T-28), (p. 2 of application for discretionary appeal). No process was issued and attached by clerk and no rule nisi or any other form of notice was provided to appellee of the existence of the employees petition prior to June 26, 1978 when the Honorable John F. Hardin stated that he did not know what it was that he signed, referring to the removal order. A copy of said order is included as Appendix A to the instant petition.

Appellee, without filing a notice of appeal, filed illegal extraordinary appeal with Supreme Court the intent of which was to notice the court of the aforesaid described events (T1-15). This nullity was denied (R-110).

Appellee filed a petition in equity and complaint for damages against State Bar Association in the Fulton Superior Court upon the advice of counsel (T-17). Presiding Judge stated that he could not entertain action as it was his opinion that the denial by the Supreme Court of Georgia of appellee's earlier extraordinary appeal constituted res judicata of the issues. *See p. 19 of transcript of single in chambers hearing held, which was read by Judge Ridgeway* (T-1) (R-30).

Appellee filed action in the United States District Court, Southern District of Georgia, Brunswick Division, under 42 U.S.C. § 1983 (T-21). Presiding Judge erroneously concluded that the Fulton Superior Court had entered a decision on all merits that would support a 42 U.S.C. § 1983 claim and dismissed appellee's action (T-21) (R-130-139) (R-135).

Appellee filed mandamus petition with Supreme Court of Georgia seeking to have employees of associations Atlanta office restore his name to active membership (T-6). Court declined to exercise jurisdiction but did so without prejudice to the appellee's right to seek relief by way of a motion to set aside the complained about order of removal in the appropriate Superior Court in light of *Carpenter v. State*, 250 Ga. 177, 293 S.E. 2d 16 (1982). (Action No. 41772 in Supreme Court) (T-6).

Appellee filed motion to set aside subject order of removal in the Superior Court of Richmond County, Georgia (T-1-42) (R-6). Honorable Thomas W. Ridgeway, Chief Judge Superior Courts, Alcovy Judicial Circuit was designated to hear motion (T-33). Motion was heard on January 30, 1986. Although State Bar Association was not a party to the proceedings, presiding Judge permitted two employees of association's Atlanta office to attend in order to acquire certain documents from them that had not been included in the record transmitted to said Judge by the Clerk (R-160). Order was entered on May 28, 1986 setting aside complained about order of removal and directing appellee

to pay dues owing (R-150). Appellee immediately tendered dues for whole year by cashier's check to Mr. Allan A. Kirwan, Executive Director of said association. Copy of said order is included as Appendix B to the instant petition.

Although not a party to petitioners motion to set aside, the State Bar of Georgia Association appealed Judge Thomas W. Ridgeways order restoring petitioner to active status to the Supreme Court of Georgia. After hearing arguments at Emory University, the Supreme Court of Georgia entered a decision reversing Judge Ridgeway's decision. A copy of said order is included as Appendix C to the instant petition.

That petitioner timely filed a motion for rehearing the text of which clearly disclosed that the Supreme Court of Georgia had misapplied the doctrine res judicata and over-looked the Georgia case of *Matthews Group & Associates, Inc. v. Wages,* 180 Ga. App. 151, 348 S.E. 2d 695 (1986) which held that movant's only remedy ever under Georgia law was to file a motion to set aside in the County that originally entered the illegal order removing petitioner as a member of the State Bar of Georgia. A copy of said motion is included as Appendix D to the instant petition.

On December 18, 1986, the Supreme Court denied petitioner's motion for rehearing. See copy of note to petitioner included as Appendix E to the instant petition.

———o———

REASONS FOR GRANTING WRIT

I. THE SUPREME COURT OF GEORGIA INCORRECTLY CONCLUDED THAT THE FULTON SUPERIOR COURT AND THE U.S. DISTRICT COURT HAD JURISDICTION TO ENTERTAIN PETITIONER'S ACTION AND FURTHER INCORRECTLY CONCLUDED THAT THE FULTON SUPERIOR COURT OR THE U.S. DISTRICT COURT HEARD THE MERITS OF THE CASE SUBJUDICE: AFTER WHICH, EITHER COULD HAVE DECIDED PETITIONER RESIGNED FROM THE BAR WHEN THERE IS NO PROVISION IN GEORGIA LAW FOR A RESIGNATION ABSENT DISCIPLINARY PROCEEDINGS.

Conspiracy may be shown by acts and conduct as well as by direct proof or express agreement. It may be shown by circumstantial evidence. It may be established by inference as a deduction from conduct which discloses a common design. The conspirator cannot remove the question of conspiracy from the jury simply by swearing that he did not conspire. See *John D. Stephens, Inc. v. Gwinett County, et al.* 175 Ga. App. 379, 333 S.E. 2d 396 (1985).

It is axiomatic and needs no citation of authority that every American is entitled to his day in court and a right to be heard before his interest, his rights, property and otherwise are affected by judicial decision.

In Georgia, after once admitted, the right to practice law is to be considered a property right, of which one is not to be deprived without notice and an opportunity to be heard and there can be no doubt that a court is without authority to suspend an attorney sua sponte without notice and hearing. See *James v. State of Georgia,* 61 Ga. App. 863.

It is undisputed in the record below that petitioner was not afforded notice and an opportunity to be heard prior to being removed from the active list of practicing attorneys and as a member of the State Bar of Georgia; also, it is irrefutable that the Richmond County Superior Court lacked jurisdiction to remove petitioner. See *Carpenter v. State,* 250 Ga. 177, 293 S.E. 2d 16 (1982); *Matter of Ben S. Atkins,* 253 Ga. 319, 320 S.E. 2d 147; *Coker v. Coker,* 251 Ga. 542, 307 S.E. 2d 500 (1984); *Barland Company v. Barton County Board of Tax Assessors,* 172 Ga. App. 61, 322 S.E. 2d 216 (1984).

It is also established law in Georgia that the only remedy or cause of action available to petitioner to challenge the illegal and wrongful removal order was in the court of rendition. See *C & S Nat'l Bank v. Burden,* 145 Ga. App. 402, 244 S.E. 2d 244 (1978); *Matthews Group & Associates, Inc. v. Wages,* 180 Ga. App. 151, 348 S.E. 2d 695 (1986).

Assuming, but not deciding, and for argument and for reason for granting of the writ, the State contends that there is no method of reinstatement for petitioner even though numerous disbarred attorneys from Augusta and elsewhere in Georgia have been reinstated pursuant to specific provision provided for their class of persons.

Georgia law clearly states that a judgment void for lack of jurisdiction over the person and subject matter is a nullity. See *O.C.G.A.* § *9-12-16.*

There are many other arguments available; however, in respect of brevity and expense, petitioner respectfully shows that a writ should issue in this instance because numerous persons some known, some unknown, have entered

into a conspiracy to establish a precedent in Georgia to the effect that should a practicing attorney, who is under oath to uphold and defend the United States Constitution and the Georgia Constitution attempts to discuss clear evidence of an impending danger to the American legal system as a whole, he can be removed from practice at the whim of the State with all constitutional rights and applicable jurisdictional and procedural law being ignored. The eight year roller coaster ride that petitioner has thus far been subjected to in various courts without a hearing ever being conducted on the merits of the situation not only premises the complained about conspiracy but proposes a dangerous precedent that will strike fear and terror into every practicing attorney in Georgia. The situation has already had an adverse affect in that while most attorneys agree with petitioner's position in private, they decline involvement for fear of reprisal. It is submitted that issuance of a writ may well correct this situation. The writ should further issue because of the courage of Superior Court Judge Thomas Ridgeway who on May 28, 1986 issued a lengthy order correctly interpreting the law and restoring petitioner to the active practice of the law. See Appendix B attached to the instant petition.

It might be further observed that the original petition for removal was filed directly with a Superior Court Judge in Richmond County, Georgia and not with the clerk and no form of notice was given petitioner until three days after the removal order was signed and the two filed with the clerk. See removal order as Appendix A to the instant petition.

———o———

CONCLUSION

Absent statutory provision or applicable judicial decision, the State of Georgia could not remove petitioner as a practicing attorney in disregard of all due process safeguards available to him; therefore, petitioner prays that a writ of certiorari issue to review the decisions of the Supreme Court of Georgia copies of which are included as Appendix C and E to the instant petition.

Respectfully submitted,

Bobby Gay Beazley, Pro Se

APPENDIX A

IN THE SUPERIOR COURT OF
RICHMOND COUNTY
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS
FROM THE
STATE BAR OF GEORGIA

IN THE MATTER OF:)	CIVIL ACTION
BOBBY G. BEAZLEY)	FILE NO. .....

ORDER

The foregoing Petition of the State Bar of Georgia read and considered.

The Respondent, BOBBY G. BEAZLEY, having on June 22, 1978, formally and under oath, resigned from the legal profession and the practice of law, and such resignation having been accepted by the State Bar of Georgia;

IT IS CONSIDERED, ORDERED and ADJUDGED, that his name be stricken as a member of the legal profession in the State of Georgia.

SO ORDERED, this 26 day of June, 1978.

/s/ John F. Harding
SENIOR JUDGE
AUGUSTA JUDICIAL CIRCUIT

Filed in office this 26th day of June, 1978.

/s/ Vivian R. Martin
Deputy Clerk

APPENDIX B

IN THE SUPERIOR COURT OF
RICHMOND COUNTY
STATE OF GEORGIA

IN RE: BOBBY GAY BEAZLEY)
)
)

ORDER

[All references herein to "exhibits" are to the exhibits attached to the February 28, 1986 Objection of the State Bar of Georgia to Motion to Set Aside, unless otherwise noted.]

FINDINGS OF FACT

On June 22, 1978, movant, an attorney licensed to practice law in the State of Georgia, sent a 34-page document to the State Bar of Georgia entitled Report To The State Bar ("Report") (See Exhibit A). In addition to allegations of political corruption, mafia activities, and a communist conspiracy to overthrow the government of the United States of America, movant stated therein as follows:

> . . . considering all factors . . . I respectfully submit that except for finding counsel to take over [my pending cases] I am resigning from the legal profession and the practice of law; . . . (Report at page 34.)

Upon receipt of said Report, the State Bar of Georgia ("State Bar") sent a copy of the Report together with a document it drafted entitled Petition For Voluntary Withdrawal From The Practice of Law In The State

of Georgia ("Petition") (See Exhibit C) to the Honorable Edwin D. Fulcher, Superior Court Judge of the Augusta Judicial Circuit. Said Petition recited that pursuant to the movant's Report and his voluntary resignation therein, the State Bar had stricken his name from its membership rolls and prayed that the court issue an order likewise striking his name from membership in the State Bar of Georgia.

Although the State Bar maintains that a copy of this Petition was sent to the movant (see Exhibit B), the movant denies ever having received it (See Affidavit of Bobby G. Beazley attached to Movant's Response Brief). Without a formal hearing, the Honorable John F. Hardin, Senior Judge of the Augusta Judicial Circuit, signed an order dated June 26, 1978 striking movant's name as a member of the legal profession in the State of Georgia (See Exhibit C). Thus despite the fact that no disciplinary proceedings had been brought against him, movant was thereafter prohibited from practicing law.

On July 3, 1978, movant filed with the Supreme Court of Georgia his "extraordinary appeal" of the June 26, 1978 order (See Exhibit D-2). That appeal was denied without opinion on August 31, 1978 (See Exhibit D-1).

Thereafter, movant sought to regain his right to practice law in almost every conceivable forum, both state and federal. The State Bar was named as a defendant in several of these unsuccessful endeavors. This Court will not attempt to relate further the procedural history of this bizarre case. Suffice it to say that the movant, having not yet achieved his desired goal, now seeks to set aside the

June 26, 1978 order in the court of its rendition, the Superior Court of Richmond County. All judges of that court having recused themselves, the formidable task of sorting out this case has befallen this judge designate.

CONCLUSIONS OF LAW

Pursuant to O.C.G.A. § 9-11-60(d), movant seeks to set aside the June 26, 1978 order on two grounds: (1) lack of subject matter jurisdiction and (2) lack of personal jurisdiction. For the reasons stated below, this Court agrees that the Superior Court of Richmond County lacked both jurisdiction over the person and of the subject matter at the time the June 26, 1978 order was signed by Judge Hardin.

I. SUBJECT MATTER JURISDICTION

In *Carpenter v. State,* 250 Ga. 177 (1982), the Supreme Court of Georgia held that:

> Matters relating to the practice of law, including the admission of practitioners, their discipline, suspension, and removal, are within the inherent and exclusive power of the Supreme Court of Georgia. *Id.* at 177.

The *Carpenter* decision firmly established that the authority to discipline, suspend, disbar or otherwise remove attorneys once admitted to practice law rests exclusively with the Supreme Court of Georgia. Any attempt by the Legislature to confer that power upon inferior courts would be unconstitutional as violative of the separation of powers.

In aid of its exclusive jurisdiction, the Supreme Court adopted Rules and Regulations for the Organization and

Government of the State Bar of Georgia ("Rules"). (See 219 Ga. 873.) The Rules, as amended, existing at the time of the June 26, 1978 order are set out in 238 Ga. 739-853. Procedures are established therein for the disbarment of attorneys.

A judgment rendered by a court without jurisdiction of the subject matter is absolutely void. *Williams v. Fuller,* 244 Ga. 846, 848 (1979). In order for the June 26, 1978 order to be valid, some basis for the issuing court's jurisdiction must be shown. The question therefore is from what source did the Superior Court of Richmond County derive its authority to strike the movant's name from the legal profession in the State of Georgia?

The State Bar claims that it transmitted the movant's Report and its Petition to the Superior Court of Richmond County pursuant to Ga. Code Ann. § 9-501, the same statute held unconstitutional in *Carpenter,* supra. The State Bar maintains, however, that it looked only to the procedural provisions of § 9-501, and not its substantive provisions. Because § 9-501 established the superior court of the county of an attorney's residence as the proper venue for removal actions, the State Bar determined that such court was also the correct venue for acceptance of an attorney's resignation. (Transcript of January 30, 1986 hearing at 9, 23). The proper venue for the acceptance of an attorney's resignation becomes a moot point, however, if there is no substantive provision authorizing the acceptance of an attorney's resignation in the first place. The State Bar admits that it can cite no precedent for the mere acceptance of an attorney's voluntary resignation (Transcript January 30, 1986 hearing at 30). Obviously *Car-*

penter, supra, precludes the possibility that such authority might have been conferred by statute. Therefore, it must have been delegated by the Supreme Court in its Rules, if at all. This Court, however, can find no authority in the Rules which would have permitted the Superior Court of Richmond County to simply accept the movant's voluntary resignation, purportedly the intent of movant's 34-page Report.

The only instance found by this Court which would empower a superior court to remove an attorney is pursuant to Standard 66 (removal of an attorney convicted of a crime). Moreover, the only situation in which the rules permit a voluntary surrender of one's license is pursuant to a disciplinary proceeding following an admission by the attorney of conduct in violation of established disciplinary standards. Rule 4-203(i). Movant herein was neither convicted of a crime nor subjected to disciplinary proceedings.

Notwithstanding the Richmond County Superior Court's apparent lack of subject matter jurisdiction, it is contended that the Supreme Court of Georgia adopted the June 26, 1978 order, i.e., exercised its exclusive jurisdiction, when it denied movant's "extraordinary appeal" from said order. This Court does not agree. Movant contends, and the State Bar does not refute, that movant did not file a notice of appeal prior to submitting his "extraordinary appeal" to the Supreme Court. The proper and timely filing of a notice of appeal is an absolute prerequisite to confer jurisdiction upon the appellate court. *Hester v. State,* 242 Ga. 173, 175 (1978). The failure to file a notice of appeal is one of the statutory grounds for dismissal of an appeal. *Littlejohn v. Tower Associates, Ltd.,* 163 Ga. App. 37, 38 (1982); O.C.G.A. § 5-6-48(b)(1).

This Court will presume that the Supreme Court would not have considered the merits of movant's appeal in the absence of a properly filed notice of appeal. Consequently, this Court rejects any notion that the Supreme Court adopted the June 26, 1978 order as its own. This conclusion is supported by the language of a later Supreme Court decision discussed in Part IV, infra.

II. PERSONAL JURISDICTION

In the absence of service process or the waiver thereof, no jurisdiction over the defendant is obtained by the court and any judgment adverse to the defendant is absolutely void. *DeJarnette Supply Co. v. F.P. Plaza,* 229 Ga. 625(4) (1972). Notice and opportunity to be heard is the very bedrock of due process. *Lester v. Croombs,* 157 Ga. App. 377, 378 (1981). The right to practice law, after once admitted is to be considered a valuable property right, of which one is not to be deprived without notice and a right to be heard. *James v. State,* 61 Ga. App. 860, 863 (1940).

Movant claims that he received no notice nor opportunity to be heard prior to the issuance of the June 26, 1978 order. Although the State Bar maintains that it sent movant a copy of the Petition, this Court finds such insufficient to meet due process requirements for several reasons. One, movant apparently never received it. Movant's affidavit overcomes the presumption of receipt. *Henson v. State,* 168 Ga. App. 210 (1983). Moreover, in sending the copy by regular mail, the State Bar failed to select a method of service reasonably calculated to put movant on notice. Two, even if movant had received said copy, it would have been received at best only one or two days prior to the date on which the order was signed. This does not

constitute sufficient advance notice especially when no hearing date was set and no hearing held. And finally, if the State Bar relied on § 9-501 to determine the appropriate venue for its Petition, then the Superior Court of Richmond County, upon receipt of the Petition, should have been bound by the procedural mandate of § 9-509 to provide the movant with personal service of a copy of said Petition and notice of a hearing date thereon. Ga. Code Ann. § 9-509; *Garland v. State*, 110 Ga. App. 756, 759 (1964). This would be true even though this was not strictly speaking an action to disbar, because it was nonetheless an action in the nature of disbarment. *Bradley v. Simpson*, 59 Ga. App. 844, 845 (1939). Note in this regard that a voluntary surrender of one's license has been held to be the equivalent of disbarment. *Carpenter*, supra at 178.

Furthermore, this Court rejects the contention that movant was not entitled to notice because he initiated the resignation process which culminated in the signing of the June 26, 1978 order by Judge Hardin. One, the movant's "resignation" as expressed in his Report was clearly conditioned on his finding substitute counsel to represent his clients in pending cases, a condition which had not yet been satisfied. Two, the movant *clearly did not authorize* the State *Bar to draft and submit its Petition to Judge Hardin.*

III. MOTION TO SET ASIDE

A judgment void because of lack of jurisdiction over the person or subject matter may be attacked at any time. O.C.G.A. § 9-11-60(f). Although the order sought to be set aside is almost eight years old, a judgment rendered by a court without jurisdiction is a mere nullity, and may

be so held wherever and whenever and in whatever way it is sought to be used as a valid judgment. *Fricks v. Fricks*, 215 Ga. 137, 139 (1959); *Strickland v. Willingham*, 49 Ga. App. 355, 357-358 (1934). Laches and similar equitable defenses, which are peculiarly applicable to equitable suits, have no relevancy to the suit at bar involving a motion to set aside a judgment upon a legal ground. *Power v. Mobley*, 170 Ga. App. 167, 168 (1984); *Moore v. American Finance System*, 236 Ga. 610, 611 (1976).

IV. RES JUDICATA

The last issue to be addressed is whether or not any of the decisions rendered heretofore will operate as res judicata to this Court's reconsideration of the validity of the June 26, 1978 order. For the reasons stated below, this Court finds that res judicata is inapplicable to movant's motion to set aside.

In order for the doctrine of res judicata to apply, there are three prerequisites to which the situation must conform. They are: (1) identity of parties; (2) identity of cause of action, and (3) prior adjudication by a court of competent jurisdiction. *Firestone Tire & Rubber Co. v. Pinyan*, 155 Ga. App. 343, 345 (1980). One additional statutory requirement is that the prior adjudication must have been based on the merits of the cause of action alleged. O.C.G.A. § 9-12-42. This Court will now address each of the proceedings which have heretofore addressed the validity of the June 26, 1978 order in light of the foregoing res judicata prerequisites.

(1) The June 26, 1978 order itself cannot operate as a bar to this Court's reconsideration of its validity. A judg-

ment which is void for the want of jurisdiction does not afford any basis for applying the doctrine of res judicata. *Eagan v. First Nat. Bank,* 212 Ga. 212, 213 (1956).

(2) The August 31, 1978 denial by the Supreme Court of Georgia of movant's "extraordinary appeal" was entered without opinion. It is therefore a matter of speculation as to whether or not the merits of the appeal were addressed. Where a judgment creates doubt as to what issues were actually decided and leaves as a matter of conjecture the basis for such judgment, the judgment is not an estoppel, *Cravey v. Druggist's Co-Operative,* 66 Ga. App. 908, 914 (1942). Moreover, there is good reason to believe that the merits were not reached (see discussion in Part I, supra.).

(3) The movant brought suits against the State Bar in both the Superior Court of Fulton County (See Exhibit E-1) and the United States District Court for the Southern District of Georgia (See Exhibit F-1). In those suits the movant alleged, *inter alia,* that the State Bar had wrongfully removed movant from its membership and was unlawfully withholding movant's license to practice law. Movant sought damages and equitable relief. The validity of the June 26, 1978 order was raised in each suit although movant did not specifically seek to have that order set aside.

On October 20, 1980, the Fulton Superior Court granted summary judgment to the State Bar but the order did not specify the reasons therefor. (See Exhibit E-3). A transcript of the proceedings, however, indicates that the court believed the Supreme Court's denial of movant's "extraordinary appeal" was res judicata. That court also indicated that it believed that the movant stated no cause of

action, i.e., that the State Bar had no authority to re-admit him. (Fulton Superior Court hearing transcript at 11, 12 and 18). This decision was affirmed on appeal.

On March 14, 1983, the Southern District Court granted summary judgment to the State Bar in a written order which cited the Fulton County decision as res judicata to its reconsideration of the issues (See Exhibit F-19). This decision was also affirmed on appeal.

The principles of res judicata apply to questions of jurisdiction as well as to other issues, and where the jurisdiction of the court is challenged, and the question is contested and decided, a judgment of the court, unless reversed or set aside, is generally held as conclusive on the parties in subsequent litigation. 50 C.J.S. Judgments, § 714. Therefore, this Court finds that res judicata bars any subsequent suit between the movant and the State Bar on any cause of action arising from the beforementioned events. See generally, *Bowman v. Bowman*, 215 Ga. 560, 561 (1959).

Nonetheless, this Court finds that neither of these decisions operate as res judicata to its reconsideration here of the validity of the June 26, 1978 order because there is no identity of parties here. Res judicata can only be set up in a subsequent suit between the same parties. *Owens v. Williams*, 87 Ga. App. 238, 243 (1952). The case at bar is a motion to set aside an order rendered in an action styled In Re Bobby Gay Beazley. Strictly speaking, the State Bar is not a party to this action. This Court invited the State Bar's participation because of its extensive involvement in the history of this case and the fact that it held certain documents and transcripts from previous litigation not found in the record transmitted to this Court

(See letter dated November 13, 1985 from this Court to William P. Smith, III, General Counsel, State Bar of Georgia).

Identity of parties means that those who invoke the defense of res judicata as well as those against whom the defense is invoked must be the same. *A.R. Hudson Realty, Inc. v. Hood,* 151 Ga. App. 778, 779 (1979). This Court finds that the State Bar is not a party which may invoke the defense of res judicata. Moreover, this Court having concluded that res judicata would bar a subsequent suit between the movant and the State Bar, it appears that no res judicata purpose would be served by denying movant's right to bring this motion to set aside.

(4) The Petition for Admission to Bar filed by the movant in the Superior Court of Long County (See Exhibit F), and its denial and subsequent affirmance by the Supreme Court of Georgia (see Exhibit 6) did not address the validity of the June 26, 1978 order and consequently does not operate as res judicata here.

(5) Most telling of the decisions rendered heretofore is the June 20, 1985 decision of the Supreme Court of Georgia (See Exhibit G) responding to movant's petition for mandamus wherein movant sought an order directing the State Bar to re-issue his license (See Brief of Plaintiff). With the present motion to set aside pending in this Court, and briefs fully reciting all prior decisions affecting the issue (See Exhibit C to Objection of the State Bar of Georgia to Motion to Disqualify), the Supreme Court of Georgia stated as follows:

> This court hereby declines to exercise its original jurisdiction over the instant mandamus petition, [cits],

> *but does so without prejudice to the petitioner's right to seek relief by way of a motion to set aside in the* appropriate superior court in light of *Carpenter v. State*, 250 Ga. 177 (293 SE2d 16) (1982). (Emphasis added)

If the high court had been of the opinion that its prior decisions operated as a bar to reconsideration of the validity of the June 26, 1978 order, then why would it have added the underlined portion of its decision above?

Accordingly, this Court finds that the June 26, 1978 order was rendered by a court having no jurisdiction of the person or the subject matter; that said order is therefore a nullity; that said order is hereby set aside; that movant Bobby G. Beazley is hereby restored to his status as an attorney licensed to practice law in the State of Georgia conditioned only upon his payment to the State Bar of Georgia of whatever dues, or a prorated portion thereof, are owing for the current year. All persons or agencies involved in the licensing process are ordered to cooperate in effectuating this order.

SO ORDERED this 28 day of May, 1986.

/s/ Thomas W. Ridgway
Chief Judge Superior Courts
Alcovy Judicial Circuit

APPENDIX C

In the Supreme Court of Georgia

Decided: Nov. 25, 1986

43777. STATE BAR OF GEORGIA v. BEAZLEY.

GREGORY, Justice.

Bobby G. Beazley brought a motion to set aside a 1978 order striking his name from Georgia's roll of attorneys. The trial court granted the motion. We reverse.

On June 22, 1978, Beazley, then a practicing attorney, sent a 34-page document to the State Bar of Georgia. The document detailed what Beazley perceived as corruption in society. Beazley concluded the document by writing he was " . . . resigning from the legal profession and the practice of law. . . . "

Upon receipt of Beazley's document, the State Bar prepared a "Petition for Voluntary Withdrawal from the Practice of Law in the State of Georgia." With Beazley's document attached, the petition was sent to the Superior Court of Richmond County. The State Bar also contends it sent a copy by regular mail to Beazley, but Beazley denies receiving it.

On June 26, 1978, with no service of process on Beazley and without a hearing, a Richmond County Superior Court judge signed an order striking Beazley's name from Georgia's roll of attorneys. Beazley filed an "extraordinary appeal" from the order with this court on July 3, 1978. The appeal was denied on August 31, 1978.

In 1980, Beazley filed a complaint seeking damages and equitable relief in Fulton County Superior Court. The

court granted motions for summary judgment and judgment on the pleadings in favor of the State Bar on October 20, 1980. The judgment was affirmed without opinion by this court on April 30, 1981.

In 1982, a similar suit was filed in the U. S. District Court for the Southern District of Georgia in Brunswick. The State Bar's motion for summary judgment was granted on March 14, 1983. Beazley's appeal to the Fifth Circuit Court of Appeals was unsuccessful.

On January 22, 1984, Beazley filed a motion in Richmond County Superior Court to set aside the June 1978 order as void due to lack of personal and subject matter jurisdiction. The trial court granted the motion and ordered that Beazley be restored to his status as an attorney licensed to practice law in Georgia. The State Bar appeals this decision.

1. The State Bar contends the trial court erred by ruling res judicata was not a bar to Beazley's motion to set aside. We agree.

"A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside." OCGA § 9-12-40. In order for the res judicata doctrine to apply, three prerequisites must be established: (1) identity of parties; (2) identity of the cause of action; and (3) prior adjudication by a court of competent jurisdiction. *Firestone Tire & Rubber Co.*, 155 Ga. App. 343, 345 (270 SE2d 883) (1980). Also, OCGA § 9-12-42 provides the merits of the case must have

been adjudicated for the judgment to be a bar to subsequent action.

In its order granting Beazley's motion to set aside, the trial court found that Beazley had raised the issue of the validity of the June 26, 1978 order in his suits before the Fulton County Superior Court and the U.S. District Court. The trial court concluded res judicata would thus bar Beazley's claims in a subsequent suit against the State Bar of Georgia.

However, the trial court found res judicata could not apply in this latest suit because of a lack of identity between the parties. The court found that the motion to set aside involved an action styled "In Re Bobby Gay Beazley" in which Beazley was the only party. The court held that "strictly speaking" the State Bar is not a party to this action, and thus not entitled to raise the doctrine of res judicata.

(a) We find the trial court erred in not ruling Beazley's action was barred by the doctrine of res judicata.

In his complaint filed in the U.S. District Court, Beazley raised the issues of subject matter jurisdiction and personal jurisdiction by the Richmond County Superior Court regarding its June 26, 1978 order. The district court granted a motion by the State Bar for summary judgment, concluding that the action was barred by res judicata resulting from the prior litigation in the Fulton County Superior Court.

In *National Heritage Corp. v. Mount Olive Memorial Gardens, Inc.*, 244 Ga. 240, 243 (260 SE2d 1) (1979), this court held that "where an order granting a summary

judgment in a prior suit is relied upon in final support of a plea of res judicata in a subsequent suit, the court considering the plea of res judicata should examine the underlying basis of the summary judgment. If that summary judgment actually was an adjudication on the merits (a plea in bar, or otherwise on the merits), the plea of res judicata should be sustained. However, if the examination shows that the summary judgment was not an adjudication on the merits (a dilatory plea, etc.), the res judicata should be denied."

The underlying basis of the U.S. District Court's decision was res judicata. A plea of res judicata is not a dilatory plea, but is in the nature of a plea in bar. *Galloway v. Merrill,* 213 Ga. 633, 634 (100 SE2d 443) (1957). Therefore, the prior adjudication in the district court stands as an adjudication on the merits for the purposes of OCGA §§ 9-12-41 and 9-12-42 and bars this instant action.

(b) We hold the trial court erred in finding the State Bar is not a party to this action capable of injecting the res judicata doctrine.

The term "party" to an action includes all who are directly interested in the subject matter, and who have a right to make defense, control the pleadings, examine and cross-examine witnesses, and appeal from the judgment. *Smith v. Gettinger,* 3 Ga. 140, 142 (1847). See also 67A CJS, Parties § 2, 639-640 (1978). Whether a person is a party to an action must be ascertained exclusively by inspection of the record. See 67A CJS, Parties § 3, 641 (1978); *Small v. Peacock,* 171 Ga. 475, 476 (155 SE2d 754) (Gilbert, J., dissenting) (1930).

The trial court stated in its order the State Bar was invited to participate because of its extensive past involvement with the case and its possession of certain documents and transcripts from previous litigation. From that point, the record discloses the State Bar acted and was treated as a party. It filed an answer, responses to Beazley's motions and motions of its own. It was ordered by rule nisi to appear at a hearing and show cause why Beazley's motion to set aside should not be granted. At the hearing, the State Bar introduced exhibits into evidence. The State Bar filed and proceeded with this appeal. All of these actions were undertaken without formal objection by Beazley.

We therefore hold the State Bar is a party in considering the res judicata effect here of previous litigation between the State Bar and Beazley.

2. Because we find this action is barred by res Judicata, we do not reach the issues of subject matter and personal jurisdiction raised in the trial court and presented on this appeal.

Judgment reversed. Marshall, C. J., Clarke, P. J., Smith, Weltner, Hunt, J. J. and Chief Judge Harold R. Banke concur. Bell, J., disqualified.

APPENDIX D

IN THE SUPREME COURT
STATE OF GEORGIA

Bobby G. Beazley — Action No. 43777

Movant

vs — MOTION FOR REHEARING

The State Bar of Georgia

Respondent-Appellant

COMES NOW, Bobby G. Beazley, who is the movant-appellee in the above entitled cause and files this his motion for rehearing in the above entitled cause and respectfully shows to this honorable court the following, to-wit:

1

That the court concluded that the complaint for damages movant filed in the Fulton County Superior Court and the resulting granting of respondent's motions constituted res judicata; however, movant shows that no such action existed in law and the presiding Judge was limited to dismissing the action for damages. See *Matthews Group & Associates, Inc. v. Wages,* 180 Ga. App. 151, 348 S.E. wnd 695(2)(1986). In Matthews, it was pressly stated that when an order has been wrongfully secured, as was the case with movant, the only cause of action available to movant was the filing of a motion to set aside said order. The motion to set aside was filed and heard by Judge Ridgeway. All other actions filed thereto were nullities and void in law.

2

That action filed in the U.S. District Court for the Southern District of Georgia in Brunswick was also a nullity and not authorized in law with the only legitimate cause available to the presiding Judge that of dismissal. See *Matthews Group & Associates, Inc. v. Wages,* 180 Ga. App. 151, 348 S.E. 2nd 695 (2)(1986).

3

That the *Matthews Group & Associates, Inc. v. Wages* decision, supra, was released by the Georgia Court of Appeals subsequent to the developments in the case sub-judice; also, this decision leaves no doubt that the Fulton and Brunswick action were absolute nullities from which no legal ruling could originate other than one of dismissal.

4

That the court suggested on page 5 of its decision that the State Bar of Georgia was permitted to drop in as a party below because movant made no formal objection; however, the record below clearly discloses that a typewritten formal objection was made by movant and file with Judge Ridgeway on the ground that the State Bar of Georgia had no legal position in the case sub-judice.

5

That the court on page 1 of its decision admits that movant was not served with process or accorded a hearing prior to an order being entered by the Richmond County Superior Court; therefore, the court was limited to dismissing the petition for lack of jurisdiction. See *Gandy*

v. Brown, 173 Ga. App. 740, 327 S.E. 2nd 851 (1985). It is axiomatic that for res judicata to apply the ruling court must have had subject matter and personal jurisdiction.

6

That there existed absolutely no contradiction below of movant's assertion that he did in fact telephone the State Bar Office and advise an agent therein that the report was an effort to obtain an investigation and give the State Bar jurisdiction to conduct one and that this contact occurred prior to any action being taken on the report by employees of said office.

7

That the most fundamental right of every American is to have his day in court and to be heard prior to the entry of any ruling against his interest; moreover, millions of Americans have fought and many died to protect this principle. Further, if this right had been awarded movant and a hearing on the merits actually heard, it would have been disclosed that movant did not in fact sign the report which was actually signed by Mr. Joe Saxon (a combat veteran) using movant's name.

8

That since a member of the State Bar Association could not voluntarily resign at the time of entry of the complained about order of removal, all actions taken by the Richmond County Superior Court, Fulton Superior Court and the Brunswick U.S. District, trying to legalize such a phantom were nullities. See *State Bar Rule 1-202; see Matter of Ben S. Atkins,* 253, Ga. 319, 320 S.E. 2nd 147

(1)(1984); *See Carpenter v. State,* 250 Ga. 177, 293 S.E. 2nd 16(1982). All of these courts assumed power that only the Georgia Supreme Court had as pointed out in *Carpenter v. State, Supra.*

9

That on page 3 of its decision, the court held that O.C.G.A. S 9-12-42 provides the merits of a case must be adjudicated (heard) for the judgment to be a Bar to subsequent action. It is pointed out that the merits of the facts of the case sub-judice have never been heard and no witnesses sworn, testimony or evidence received. *Clearly, movant would have been the only witness absent Joe Saxon, as to why the document labeled "Report to the State Bar" was forwarded.*

10

(A) On page 3 of its decision, the court list four (4) prerequisites to be established before the principle res-judicata applies. Employee Elizabeth Anne Bloom stated before Judge Ridgeway that the State Bar of Georgia did not file the petition for withdrawal itself, but forwarded same on behalf of movant Bobby G. Beazley. This is borne out by the fact that the State Bar of Georgia's name does not appear on the petition and that under the State of the law, the State Bar had no authority to file such a petition in a Superior Court. See *State Bar Rule 1-202; Matter of Ben S. Atkins, Supra, Carpenter v. State, Supra.* Therefore, the conclusion is inescapable that the State Bar was not a party;

(B) Identity of the cause of action is not present as movant filed an action before Judge Ridgeway to set

aside for lack of personal jurisdiction and lack of subject matter jurisdiction and these were not presented to either former court; also, neither cause could have been presented as under Georgia law, only the court of rendition (Richmond Superior Court) could have set the complainted about order of removal aside in a direct proceeding. See *Peugler v. Glynn Cty. Fed. Emp. Credit Union*, 171 Ga. App. 9, 318 S.E. 2d 687(2) (1984). Therefore, under law, there was and could not have been an identity between the action filed before Judge Ridgeway and any of the former actions. For a collateral attack to have been brought, it would first have to be admitted that the removal order was void on its face which it was and is.

(C) There could not have been prior adjudication on the issue of resignation by a court of competent jurisdiction as one in movant's circumstance could not resign and walk-off if he had wanted to. See *State Bar Rule 1-202; Matter of Ben S. Atkins, Supra, and Carpenter v. State, Supra.*

(D) As above stated, the merits of why the report was forwarded, who forwarded it, etc. have *not been heard* as of this writing. Only legal technical rulings have been heard; moreover, exhaustive efforts have been made to avoid a hearing by those at the Bar who should be demanding a hearing.

11

Movant admits that the recent case of *Matthews Group & Associates, Inc. v. Wages, Supra,* would most likely bar any suit against anyone, or entity, for having

the void and illegal order of removal entered as that decision limited movant's only cause of action to one setting aside said order which the Honorable Thomas W. Ridgeway did in fact do.

12

That the court below found that movant did not authorize the subject petition for voluntary withdrawal to be filed and that finding was not to be disturbed unless clearly erroneous. See *O.C.G.A. S 9-11-52(a) (R-157).* Nowhere in the text of its November 25th decision did this court point out that this finding was erroneous.

13

That this court has not disputed movants assertion that the documents labeled "Extraordinary Appeal" was illegal and a nullity as no notice of appeal was filed in the Clerk's Office from the order of removal; therefore, the denial of this nullity could not have formed the basis of a res judicata defense in the Fulton County Superior Court proceedings. It is to be remembered that the Fulton County Court stated that it could not grant movant's relief as the denial of his extraordinary appeal by this court constituted res judicata. (T-19)

14

That this court ruled on page 6 of its November 25th decision:

> "Because we find this action is barred by res-judicata, we do not reach the issues of subject matter and personal jurisdiction raised in the trial court and present on this appeal."

It is axiomatic and needs no citations of authority beyond those presented in movant's brief to this court that since the Richmond County Superior Court did not have subject matter jurisdiction and did not have jurisdiction over movant's person, there is absolutely nothing the Fulton Superior Court or U.S. District Court could have said or done to correct those original defects. Further, since this court did not find Judge Ridgeway's finding of lack of subject matter jurisdiction and personal jurisdiction to be in error or flawed, the decision of the U.S. District Court or the Fulton County Superior Court could not be the basis any res judicata defense.

15

That a copy of this court's November 25th decision is attached hereto and by express reference made a copy of this motion.

Wherefore, movant prays that this his motion for reconsideration be considered, that a hearing be held, and that the November 25th order of this court be amended to uphold the order of the Honorable Thomas W. Ridgeway.

Respectfully submitted, this 2nd day of December, 1986.

/s/ Bobby G. Beazley

1557 Gordon Highway
Suite D
Augusta, Georgia 30906

APPENDIX E

February 2, 1987

Honorable Joline B. Williams, Clerk
Supreme Court
State of Georgia
State Judicial Building
Atlanta, Georgia 30334

Re: State Bar of Georgia vs. Beazley
Case No. 43777

Dear Ms. Williams:

May I respectfully inquire as to whether or not the court has acted on the motion for rehearing that I as appellee filed in the above entitled case.

Sincerely,

/s/ Bobby G. Beazley

Mr. Beazley:

Reconsideration was denied 12/18/86 and notice mailed to you on that date.

/s/ J. Williams

Supreme Court, U.S.
FILED
MAR 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1401

In The
Supreme Court of the United States
October Term, 1986

BOBBY GAY BEAZLEY,

Petitioner,

v.

THE STATE BAR OF GEORGIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITIONER'S APPLICATION FOR CERTIORARI

William P. Smith, III
General Counsel
State Bar of Georgia
Counsel for Respondent
800 The Hurt Building
Atlanta, Georgia 30303
(404) 527-8700

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

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I. In 1981 and in 1984 the Supreme Court of the United States considered and denied petition by this petitioner for a writ of certiorari to the Supreme Court of Georgia and for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit, respectively. The consideration under Rule 17 in those proceedings were identical to the considerations now before the Court. The writ was denied then, and respondent respectfully submits that it should be denied now for the same reasons. 4

II. The order granting summary judgment to the respondent in the Fulton County Superior Court on October 20, 1980, which was affirmed without opinion by the Georgia Supreme Court on April 30, 1981 on the basis of res judicata, and the order of District Court Judge Alaimo and its subsequent affirmance in the Eleventh Circuit Court of Appeals constitute a bar to the present action. 4

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STATEMENT OF THE CASE

This litigation grows out of the action of the Petitioner, Bobby G. Beazley, in June, 1978 in sending to The State Bar of Georgia, hereafter "State Bar," a statement entitled "Report to the State Bar," regarding a Communist plot to dominate the world. On the last page of that report was his resignation from the legal profession and the practice of law.

After entry of a Superior Court order accepting his resignation and striking his name from the rolls of members of the legal profession in the State of Georgia, petitioner filed in the Supreme Court of Georgia what he called an "extraordinary appeal" regarding the allowance of his withdrawal from the profession. The appeal was denied on August 31, 1978.

Subsequently, in 1980, petitioner filed suit against the State Bar in the Superior Court of Fulton County, Georgia. In his original complaint and later amendments he sought, among other things, reinstatement as a member of the bar. He charged that respondent's actions in his removal from the rolls of practicing lawyers and in failing to reinstate him upon request violated the due process and equal protection clauses of the Fourteenth Amendment.

In that suit both parties filed, among other pleadings, motions for summary judgment in their favor. After a hearing the court granted respondent's motion for summary judgment and denied petitioner's motion.

Petitioner appealed that decision to the Supreme Court of Georgia which affirmed it without an opinion

on April 30, 1981. Petitioner then applied to this Court for a writ of certiorari which, on October 5, 1981, was denied.

In June, 1982 petitioner filed a complaint against the State Bar in the United States District Court for the Southern District of Georgia in which he alleged substantially the same facts as in the previous state court action and charged that the State Bar had violated his constitutional rights. Respondent filed a motion for summary judgment based on the principle of res judicata and other grounds. Chief Judge Anthony Alaimo, after considering only the defense of res judicata, sustained respondent's motion and granted it a summary judgment.

On appeal to the Eleventh Circuit the judgment of the district court was affirmed, per curiam, without an opinion. On February 27, 1984, after allowing petitioner to file a petition for rehearing out of time the Eleventh Circuit, per curiam, denied a rehearing. Petitioner then applied to this Court for a writ of certiorari and supplemented his petition approximately fifteen times until, on October 1, 1984, the petition was denied.

On or about November 27, 1984 appellee petitioned the Supreme Court of Georgia for a writ of mandamus against the State Bar of Georgia. The Supreme Court denied the petition on June 20, 1985.

In the meantime, on January 22, 1984, appellee filed a motion to set aside pursuant to O.C.G.A. § 9-11-60(d). Appellee contended that the June 26, 1978 order was void for lack of subject matter and personal jurisdiction. A hearing was held and the judge in the Superior Court of Walton County granted petitioner's motion to set aside

and directed "all persons or agencies involved in the licensing process . . . to cooperate in effectuating this order." From that order respondent sought an appeal to the Supreme Court of the State of Georgia. The Supreme Court, in a decision dated November 25, 1986, reversed the trial court and found that the instant action was barred by the doctrine of res judicata.

To give the Court a coherent history of this litigation and a sound basis for applying the standards in Rule 17 to this application for a writ of certiorari respondent submits with this brief an appendix containing the materials listed in the footnote.[1]

---

[1] (1) Petitioner's "Report to the State Bar" containing his resignation.

(2) Order from the Supreme Court of Georgia dated August 31, 1978 denying Petitioner's "extraordinary appeal" filed with reference to the allowance of his withdrawal from the State Bar of Georgia.

(3) Order of Georgia Supreme Court dated April 30, 1981 denying Petitioner's appeal from summary judgment entered against him in *Beazley v. State Bar of Georgia.*

(4) Order of the Supreme Court of the United States dated October 5, 1981 denying Petitioner's petition for writ of certiorari with respect to *Beazley State Bar of Georgia.*

(5) Order entered by Judge Alaimo in the United States District Court for the Southern District of Georgia, Brunswick Division, granting respondent's motion for summary judgment in *Beazley v. State Bar of Georgia.*

(6) The Petition for Writ of Certiorari filed with this Court with respect to the district court's opinion entering summary judgment in favor of respondent.

(7) The Order of this Court dated October 1, 1984 denying Petitioner's petition for writ of certiorari in the matter of *Beazley v. State Bar of Georgia.*

(8) The opinion of the Georgia Supreme Court dated November 25, 1986 reversing the trial court, holding that Petitioner's claim is barred by the doctrine of res judicata.

ARGUMENT

I.

In 1981 and in 1984 the Supreme Court of the United States considered and denied petitions by this petitioner for a writ of certiorari to the Supreme Court of Georgia and for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit, respectively. The considerations under Rule 17 in those proceedings were identical to the considerations now before the Court. The writ was denied then, and respondent respectfully submits that it should be denied now for the same reasons.

The issues before this Court in the present proceeding are similar to the issues before the Court in 1981 and 1984. Not only are those issues not worthy of further consideration of Rule 17, but if, after denying a writ of certiorari to the Supreme Court of Georgia in 1981 and a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit in 1984, this Court should now grant the writ, the result would be confusing and harmful. It would indicate that there is, indeed, no finality to a judgment entered either by the highest court in the state, the Supreme Court of Georgia in this case, or by the highest court in the land.

II.

The order granting summary judgment to the respondent in the Fulton County Superior Court on October 20, 1980, which was affirmed without opinion by the Georgia Supreme Court on April 30, 1981 on the basis or res judicata, and the order of District Court Judge Alaimo and its subsequent affirmance in the Eleventh Circuit Court of Appeals constitute a bar to the present action.

Respondent relies on the analysis and authorities in the opinion of the Georgia Supreme Court found at (8),

appendix, attached hereto, as well as the analysis and authorities in the order of Chief Judge Alaimo found at (5), appendix, attached hereto.

CONCLUSION

For the reasons stated above, respondent respectfully submits that there are no special or important reasons for another review and urges this Court to deny the petition for a writ of certiorari.

Respectfully submitted,

William P. Smith, III
General Counsel
State Bar of Georgia
Counsel for Respondent
800 The Hurt Building
Atlanta, Georgia 30303
(404) 527-8700

APPENDIX 1

Received 6/23/78
State Bar of Georgia

STATE OF GEORGIA)
COUNTY OF RICHMOND)

REPORT TO THE STATE BAR

TO: THE STATE BAR OF GEORGIA

COMES NOW, Bobby Gay Beazley before the undersigned officer, who is duly authorized to administer oaths, and who after being duly sworn, deposes and states the following to be true and correct, to wit:

-I-

PURPOSE

To lay before the State Bar of Georgia certain matters that seemed to have heretofore escaped its' attention and which are in the considered judgment of deponent, and others, of sufficient importance to merit careful consideration and for other hereinafter stated reasons.

-II-

FACTS

Since 1972 there have been a string of headlined matters locally and news accounts throughout the State of Georgia involv- deponent, those things he spoke out for, some of his clients, etc. and a rash of complaints all unmerited filed with the State Bar against deponent; however, the bizzare irony of it all is the blatant and undeniable fact that not on one occassion has there ever

been a hearing, trial, etc. to test the merited, or unmeritedness, of all that has been said, written, or otherwise uttered about deponent. Obviously, this has not been fair to the whole Bar and the community.

It would be incredible to assume that the State Bar or the Augusta Bar has remained oblivious to the hereinafter set-forth circumstances; furthermore, inaction by both groups over what has certainly been a prolonged period of time compels any person of average intelligence to conclude *that those responsible are the authority from which there is no appeal.*

Over the past year and a half I have spent the greater part of my time working on a segment of a project the results of which are now in the hands of the United States Army; furthermore, I have asked for no reward for my labors which I did out of loyalty to the Republic and which I might say caused a significant increase in the abuse, humiliation, ridicule, and degragation that I have always received from Superior Court Judges Fleming, Pierce, and Fulcher.

I have long since concluded that the State Bar of Georgia is powerless to do anything about the hereinafter reported situation and that any person complaining of it would simply be further abused, harassed, and ridicule by those who cannot yet produce sufficient courage to face a truth that is commonly known and accepted on the streets of Augusta; furthermore, while it would take a book to report all of it, I have decided to condense it in a few pages for the sole purpose of having on public record with the State Bar of Georgia what is the absolute truth the

veracity of which can be easily ascertained by elementary examination.

It is submitted that the State Bar can accept the following facts to be authentic and real as the gospel, to wit:

(a) that for the past thirty years the Mafia has had a profitable operation in Augusta.

(b) that Augusta, as are many communities, in terms of organized crime has been a district.

(c) that for thirty years one Mama Bird Bob Best was the front man for organized crime in Augusta and as such ran a numbers racket, prostitution, parley cards, and other illegal schemes, shams, rip-offs, and cons on the public wide open and in full view of all police and judicial authority.

(d) that Mama Bird Best was answerable to certain lawyers in Augusta who bank rolled his start, with organized crime money with the understanding that upon his death, all of his holdings would revert to these lawyers or their designated successors.

(e) that over forty years ago, the Mafia realized that Black votes, which were solidified in a Black block, could for the most part be purchased like goods in a K-Mart store.

(f) that by purchasing the Black block vote and consolidating it with the White votes that it could get with money, fear, intimidation, bribery, extortion, pay-offs, frames, Mama Bird Bob Best, as front man, soon gained a predominant foot hold over all judicial and police authority in Augusta; moreover, almost every political office was converted into a money making venture for the mob whose

cronies won easily over all other candidates as a result of the profits from illegal ventures being laudromatted into buying the Black block vote.

(g) that after a few years, Augusta and many other communities found nothing but utter incompetents in the positions of judges, county attorneys, city attorneys, county commissioners, city councilman, etc. all of whom gained dominance over the remaining population with the age old Mafia rule that one fix, favor, or free whore stamps a man's ass like a cow.

(h) that in 1970 and as a result of an act of deception, I found myself right in the middle of the Best mob and what was openly labeled within the mob as the Dixie branch of the Mafia.

(i) that I saw rip offs and schemes that would stagger the imagination, such as a 3 million dollar rip off on the public of a Best bond scheme, a case fixing scheme whereby one with the right price could know the judge beforewhom he would appear, his sentence, and his cost all in one day, a vote buying scheme, lawyers gathering around our firm like a lot of voters in a voting booth the week before criminal court to ask for favors, a Bar Association that openly accepted the practice with a great many of its lawyers openly addressing Mama Bird as Mr. Best and the majority of lawyers having the greatest respect for Mama Bird's boss one George Nicholson, since deceased.

(j) that Mama Bird's and Nicholson's system succeeded in having one William Barton appointed district attorney, one William Fleming, Jr. judge of the Superior

Court, John Fleming President of the Board of Education and electing a controlling share of the City Councilman and County Commissioners; whereupon, as was stated openly by Best in the offices of the Nicholson and Fleming law firm and in the halls of the Johnson Building, "Its mop up time for real now!"

(L) that the city of Augusta had an ordinance whereby one liquor store could not be within 200 feet of another; however, by making his council suspend the ordinance time and time again, Mama Bird had converted one end of Broad Street (main street in Augusta) into a slew of liquor joints, go go girl places, clip joints, and whore houses each run by a front man answerable to the mob only which insured judicial immunity to all its operations.

(m) that shortly after I joined the firm, John Fleming sent me to the courthouse and said Billy (D. A. Billy Barton) was going to run me through a test to see how I did. When I arrived at the courthouse, Barton told me to go into a preliminary hearing and plead a 14 year old Black named Charles Oatman guilty of shooting and killing his three year old sister. I went into the room where the Black was being held and he was under a table playing cowboys and indians; whereupon. a Black social worker told me that he had a low I. Q. and was a moron. I told D. A. Barton that the boy was not all there but he said it was a dummy act and directed that the hearing start. Against all rules and logic, Oatman was bound over and I pleaded that he not be put into the County jail with the common criminals but D. A. Barton insisted that he go there. Two days later, Oatman was killed in the County jail. I was called by an officer and told that Oatman had

fell out of a bunk but when I went to the hospital and talked my way passed a nurse that I knew, I discovered that Oatman's head and face had been beat in. I told the family to call Black attorney Jack Ruffin. A few days later about 250 Blacks showed up at the County Bldg. to protest. D. A. Barton called the police and ordered them to shoot to kill if anybody started something. A riot commenced and burning and looting for and wide began; whereupon, the national guard was called in. Thousands of Blacks were arrested for curview violations and other reasons. D. A. Barton and Mr. Nicholson quickly put the word out in the Black community that all who hired our firm would not be prosecuted. We rolled in the money for days on end. We opened up payment cards by the thousands. When it was over, D. A. Barton quietly dropped the whole thing after which, I was graduated with a raise, a lincoln contiental, and a promotion of approval for my defending Oatman and telling the press that it was a shady deal all of which caused a riot and our firm to make a quick mint and all in accordance, as I later learned, with the scheme that sent me to the courthouse to do just what I did without knowing that I did it. It was later said in the firm that my talent could be used after all and that I could not squeel because nobody would not believe that I was not in on it from start to finish.

(n) that down at the Alpine Liquor Lounge, D. A. Barton bragged how he stuck it to a guy named Boatright up on the hill. He said Boatright got drunk, threw his wife out of the car, and then came back down the road and ran her down. Barton bragged how he carried some expert to the grand jury and zig zagged the testimony and got a no bill. When I opened my ignorant mouth and asked how he

got to put evidence before a grand jury when no other defendant did, Barton said to me, "Boy! What in the hell do you care as long as the cash register rings for our team."

(o) that a short time thereafter, Mama Bird came into my office and asked me what kind of meeting was that referring to the picture that I had on my wall of the signing of the Declaration of Independence. When I told him that he would not understand, he cussed me out like a dog; whereupon, I told him that he was not so smart neither because I had figured out that all the adding machines running at his end of the hall and which sounded like a thousand wood peckers coming threw the wall was not above board. Mama Bird told George Nicholson that I was finished and to get me out; however, Mr. Nicholson told him that I needed time to adjust and that all this was strange to me. I learned then that Mr. Nicholson had more power than Mama Bird because I stayed but Mama Bird's end of the hall was put off limits to me.

(p) that I began to put the firm on the map in the civil law business, was named law day chairman, and appeared headed to the top all of which caused Mr. Nicholson to state to Mama Bird in the hearing of a secretary loyal to me, "you could not buy camaflouged cover like he is giving us at an Army store."

(q) that when it was decided to add a third Superior Court Judge to the circuit, the gang began pulling out all favors to get Bobby Barton of our firm appointed with Mama Bird leading the way and saying that if we could get Barton on, the bastards would have to have a pass to get in the courthouse; whereupon, I wrote then Governor

Jimmy Carter a letter telling him that Barton was unqualified. I had supported (regretably) Carter for Governor and felt I had some weight. I was found out, cussed out, and told to get out; however, John Fleming said he needed me for the big one and thus I was told to keep the door to my office closed and to stay out of sight, except for coming and going.

(u) that shortly thereafter, John Fleming called me to his office, shut the door, and told me this was it. He asked me had I kept up with the school bussing fuss which he was in the middle of as President of the Board of Education. I toi l him just from what I saw in the paper; whereupon, Fleming told me that he was going for it and that if he could get the White folk for him, Mama Bird and his people around the State would buy the Black vote for him in a U. S. Senate bid. I told him that I didn't quite understand and he had George Nicholson explain to me how it worked. Fleming then said that all he needed was some one to head the school case in federal court that could throw out mumbo gumbo that looked right and throw the press off and give him an opening. To this, he directed that I go across the street and tell Frank Pierce, who was the school board attorney and county attorney, to take a dive and that I was taking over. When I asked him whether Pierce would go along, he said, "he needs the Nigger vote to be Judge so he won't cross Mama Bird now!" I went to Pierce's office and found that he had compiled a slew of cabinets of information and data on the bussing situation but that when the smoke cleared, he did not know which way the busses were going or had any knowledge of the law or issues involved. I assumed command of the case and by trickery got Pete Fleatcher a good friend of

mine in the case so that we would have some check on Fleming if he tried to go all the way to Mars on the no hope situation. We battered the feds with a new series of pleadings and maneuvers that gave Fleming the news splashes and public support that he wanted but all of which met with the same denied ruling from the Federal Courts which appeared to be writing the law as they went along. When I told Fleming that Judge Lawrence (federal judge handling the school case) was getting ready to let the hammer fall on us, he said, "the heats on! Let him hang his self."

Thereafter, Judge Lawrence had a school plan drew up by two Rhode Island professors, who Fleming described as two Rhode Island Morons, and told us to take it or leave if we did not come up with a plan to settle it. Basically, the Rhode Island plan called for setting up a district made up of Butler High School, T. W. Josey High School, and Murphey Junior High School. The problem was that Josey would be the graduating high school in the district. With emotions running high in the Community and with D Day with Judge Lawrence a few days off, Roy E. Rollins, who was the school superintendant, come up with a counter plan that would back fire the Rhode Island plan and myself, Pete Fleatcher, and Frank Pierce went to his office for a discussiion. Fleming declined to do and directed that I go see what Coy Roy was up to. Mr. Rollins laid it out and it came down to who was going to put it on Fleming and all eyes turned to me. When I told Fleming about the plan and that I thought we were being set up somehow because Mr. Rollins would have to know to much law to draw such a plan to fit the Swann school bussing case so good, he said Rollins was trying to be cute and Coy and told me

to kill the plan. When I further told Fleming we had a duty to show it to the members of the school board, he said, "If you will shut up, do what you are told, and quit trying to second guess me, you might still be on board when we separate the men from the boys!"

Thereafter, I received numerous calls from a panic sounding Frank Pierce who said that I was lead counsel in the school case and it was my responsibility to see that the Board learned of the plan. Pete Fletcher was also upset and he and I met for a cook out; whereupon, it was decided that I would inform the Board. At a hearing, I could explain in detail the importance of the plan but to make a long story short, I typed up a thirteen page memo and mailed it out to the Board members. Knowing not how Fleming would act, I stayed out of work the next day during which Fleming called me up and told me after cussing me out like a dog in the street that he was going to make me regret the day that I was born, that I was finished in the law business in Augusta, and among other things that I was fired totally, wholley, and in all regards. The affair made headlines and Fleming went on Channel Six television and downgraded me further during a 7 minute high pitched speech accompanied by angry gestures and all of which was fully aired.

As a result, the secondary schools wound up with the worst plan of all: a zone plan subject to constant change and review by the Federal Court; furthermore, I was denied any hearing as to why I was fired before the school board and President of the Board John Fleming issued a statement to Frank Adams of the Chronicle saying, *"he is not entitled to a hearing as he has been reduced to a status of insignificance"* all of which made headlines.

(r) that after the aforesaid, I opened up a small office on Telfair Street with the idea of practicing law; however, before getting started good, I found myself in the office of the Honorable Frederick Kennedy, who was an honest man and hated by the mob which was preparing to celebrate Kennedy's forthcoming retirement with a V E Day type celebration, and we had a long discussion obout our church, the community, etc. I soon thereafter decided upon a plan to run for district attorney against William Barton who was dying with a tumor but a fact which was being kept from the public so Barton could be re-elected, pulled, and his dummy stool pidgeon assistant Batch Flythe appointed in his stead all in order for the "Gold Mine Operation", as Best described it to continue in the right hands.

(s) that I waited until the last minute to qualify against Barton; furthermore, it goes without saying that the mob was caught totally off guard. A few days after I qualified, a big Black car pulled up outside my little office on Telfair Street and two rugged looking characters got out, opened the back door, and out stepped Mama Bird. He hurried into my office with the men behind him and I met him in the front room; whereupon, he told me, "Boy! I could float you today, tomorrow, or the next day, but you gonna go one day at a time and don't think you will whip me because my boys will be here long after I'm gone from here. When I put it down, its down." They then left the office cussing and fuming; after which, I reported the matter to certain local newsmen who were following the situation.

(t) that I then received a series of threatening calls from a run down prostitute who told me to hang it up.

I admitted to newsmen that I had been out with her two or three times but that she was a hand me down, or pass on Broad, from the Fleming crowd who said that I was the last in line. I told the thing to breeze off; whereupon, she stated, you trying to put the skids to my people and we can't have that." I hung up the phone.

(u) I have devoted a half of a manuscript to the district attorney race; however, I will limit my reporting of it here to state it was like a real war with daily and nightly threats, reports of cases disappearing, bonds going unforfeited, etc. etc. On July 7, 1972, we held a news conference and reported that Barton could not serve and the matter made headlines; however, instead of prompting a major investigation by the local Bar, as it should have, certain lawyers began to scheme of a way to get their man into the office and cut me and Barton out.

(v) that I telephoned Attorney A. Roland Dye, who had always professed to be a pillar of the community, and asked him why he was supporting Barton whom he knew could not serve; whereupon, he replied, "I would co-manage the devils campaign to stop you from getting that job cause all you want is to come on us." I had know that Dye's relationship, and that of his firm, was thick with the Fleming Firm even though that fact was camaflagued from the public; however, I didn't think Dye would put his self out on the firing line like that since I knew him to be a coward that struck with rumor, from the bushes, behind rocks, from beneath, from behind, and every other way beside up front and head on for a fair fight.

(w) that shortly after the July 7th news conference, I was summoned to Mr. Roy V. Harris' office. Mr. Harris

was strong in local and State politics and I could not understand why he wanted to see me. I informed certain members of the press that something was up in addition to a few members of the Sheriff's Department. At our meeting, which was held in Mr. Harris' law office, Mr. Harris said that John Fleming had been quick on the trigger and was regretably a hot head who made his own bed but that I had somehow come into false information about Barton being sick and unable to serve. Mr. Harris went on to say that he had met and had lunch with Mr. Barton, that he was a little sick, and that he would be well shortly. He further told me to get out of the race and that the boys would reserve something for me later after they had had ample time to throw cold water on John Fleming. He said that the only people that could benefit from a continued fight with the Flemings, Barton, etc. would be the Republicans and that unless I pulled up right then, I may as well pull out. I told Mr. Harris that I would give serious consideration to what he had to say and left; whereupon, as a safety precaution, I visited, along with my campaign manager, a local television station and recorded on tape the text of the conversation with Mr. Harris.

(x) that as the district attorney race came to the wire and it appeared that we would win, certain members of the Bar took leave of their senses. To begin with one judge and certain lawyers, who knew better visited the editorial staff of the Augusta papers and related that I was unqualified a fact they knew to be false. But the undeniable act that showed just what gutter people we were against was the act of Bobby Barton and Kenneth Chance conspiring with an incompetent dying district attorney

and his stool pidgeon assistant, and the gang, to bring the aforesaid prostitute from Charleston, S. C. to slander me. They set up a stage performance and supplied the sick thing with drugs two weeks before her speech; after which, they called in all the news media and had the thing read off a speech typed up on a type writer from the Harris firm of all places. She accused me of numerous blatant lies and the matter made headlines; however, not on a single occasion was a hearing ever conducted to test the meritedness, or unmeritedness, of the lies. It cost us the election for sure as it went down two days before election time; furthermore, despite that we had clear evidence of election fraud in Columbia County where sufficient ballots were missing that would have gave us the election as only 250 votes made the difference. As a footnote, one year after the slander, the prostitute made a tape for me and a local newsman and therein stated how the slander was set up, by who, and what she got. I submit this for the sole purpose of disclosing what a low rent segment of the Bar we have but which for some reason cannot be dealt with by any known authority.

(y) that after the race, a third crowd of lawyers ran the current D. A. as a write in candidate and after all of the above won easily; however, it should be noted that instead of being grateful to me, this spoiled little rich kid, who is utterly incompetent, in another way, has made every effort to run me into the ground, along with his bank friends, all who have ignorantly concluded obviously that such would justify their cowardice in not confronting the Best mob at the outset when they knew the situation as good as I. It might also be noted that even though Bath Flythe who stated before members of a grand jury later

that thousands of cases did not dissapper under Barton but were held to have something on people, remained Allen's assistent and was later rewarded for his services by being appointed Civil Court Judge a position from which he can lower and raise, depending on the circumstances, criminal bonds depending up n instructions from the gang.

(z) Less than a month after the general election, Mr. William Barton passed away.

(a) that after the district attorneys race, I tried to practice law and forget things, but I found that people will not let you fortet. Letters that I had purportedly written to the hereinabove described prostitute and copies of which were passed out at the courthouse by Judge William M. Fleming, Jr., were sent to my wife along with false reports on my activities. The strain and tension of it all for two people that had never experienced such, along with ill advice from local members of the Bar who were eager to blot my record to justify their cowardice and the numbers racket brand on their asses lead to a divorce that should have never been. You can verify that!

(b) that I accepted a case presented by the Richmond County Property Owners Association, who were a group of approximately 500+ citizens interested in good government, to challenge the tax assessors board and their utterly incompetent stool pidgeon attorney Robert C. Daniel, Jr. We found that the Board had not had a man on their staff qualified to appraise corporate properties for many many years. We further found that most corporations that located within the county were getting tax breaks forbidden by law, that most corporate properties were ap-

praised for tax purposes at the construction price of sometimes fifty years ago, and that the famous Masters Golf Course was valued for tax purposes at six million when competent advice put it at an actual 20 million value. We suceeded in getting an out of town judge the Honorable Walter C. McMillan and with him in charge, we scored what you might say was a knock down after knock down over the Board and their utterly incompetent parasite on the public attorney Robert C. Daniel, Jr. We found a code section that would permit us to go back 20 years and collect back taxes from all these places but when the word got out, a group of the highest and most respected thereto fore lawyers in Augusta came to my office and told me that if I tried it, I would surely have my hair parted down the middle, buy a slab at Elliott's funeral home, get a cork up my rear end, and that I had taken on more than Mama Bird. I spent a lot of time on the case and made no money; furthermore, we proved conclusively that the home owner in Richmond County had been more than had, tagged, and bagged for years by corporations, banks, etc. that had low appraisals while the homeowners always went up to match the highest price house on the block. At the time, such a procedure fit to the tee, the degree of competence in the assessors office as the sale of a house and its price could be got by a grammar school student. Billions to the home owner would have been the difference. We carried the matter and the law to the new district attorney and showed him where prosecutions should be made; however, his answer was, "you expect me to prosecute my friends!" We got a new tax assessor; however, when he tried to clean up the office and hit the corporations, he was fired in what amounted to a stink and a stool pidgeon

who had been in the office for all the time the above was going on was named to replace him. In short, we had gone in circles.

(c) that I soon began to get a cluster of cases from people who thought I would defend them from the system; furthermore, I found that all of these people had utter contempt for the judicial system, disgust for lawyers in general, and all with what the average lawyer would quickly described as a no hope case. Two of these cases and what happen to me as a result of defending my client should be interesting, to wit:

(1) In 1974 one Trudie H. Sipes fell into my office with a desperate, last resort, and up front absolute no hope case. It appeared from the bizzare of facts, that she and her husband Billy Sipes, who had abandoned her earlier, had a pretty good business going at a local bar called the Partridge Inn and just as they got ready to branch out their operations, the I. R. S. came down on them with a jeopardy assessment and caused them to lose it all. To make a long story short, I moved into the Partridge Inn where the lady lived and spent an untolled number of hours and months studying the facts of the case. Only God knows how much time I spent and lost on the case. I discovered that what had actually happened was that a charge card arrangement, which I will not discuss here, had beat the hell out of the government but that the government was unaware of how it had been beat and was wild pitching it on a net assessment case. In June of 1976, we went to trial in the U. S. Tax Court in Atlanta with the Honorable William A. Goffe presiding. During the second day, the case was thrown out as it did in fact develope that the

government had missed the boat on a scheme that was being used by many bar and lounge owners to rip off the I. R. S. for billions. Needless to say, they are now aware of the situation. You can verify that through Bob Willis of The I. R. S. office in Atlanta. Shortly after we returned to Augusta, the Sipes directed that I commence preparations to sue the government and I ordered a copy of the transcript of the Atlanta proceedings. When the transcript arrived, I received a telephone call from Judge William M. Fleming, Jr. who requested that I bring him a copy. I wondered how it was that he knew I had it and I further assumed that he wanted a copy so that he could see if there was another way that he could flim flam the I. R. S. After I had given the copy of the transcript to Judge Fleming, he to my utter amazement told me that he had received a telephone call from a girl that I had supposedly gotten pregnant and that he knew where he could direct the girl to get an abortion for $75.00 all in an effort to cover me so he said. I told Judge Fleming to play along, learn the girl's identity, who was sponsering her, and what their game was so that I could nail them. He seemed a little surprised but agreed to play along; however, I never did hear from him on that score and I have long since concluded that another of the gang's weakminded traps back fired and exploded on the runway.

A few days later, Mr. Sipes telephoned me and stated that he wanted the Burnside, Dye, and Miller Firm to assist me in his case, that he was in their firm, and that he had made the arrangements. I didn't take to the idea of working with A. Rowland Dye on the case but I did need help and he professed to know all about how to process the case. After eight weeks, Dye's firm had done nothing on the

case and I accordingly fired Dye and his firm. I then contacted Billy Calhoun about getting into the case but before he and I could get rolling, Mr. Sipes appeared in my office, fired me from the case, said that he was hiring John Fleming, and took all his papers. A few days later, he came back and said he wanted the law. When I told him that it was work product, he threatened to beat me up; whereupon, I gave him the law knowing that John Fleming would never understand it. Fleming later told me that he and I could work something out on the case and that he was going for a deal. I told John Fleming that so he had stole a case from me right in front of everybody what had he proved since he didn't know what to do with it and it was common knowledge that he was trying to cover the people that I was going to direct the case against not help the pitiful Sipes. The Flemings sure wanted that case bad. I wonder why????

(2) A young man named Steve Hoffman came to my office and said that a long haired deputy named Bennie Broome had first told him that he was in his zone and had to pay a fixed amount of money per month to operate his small bar. Hoffman refused and later found his apartment tore up and furniture cut up. A warrant was left in the apartment with instructions for Hoffman to turn himself in at the jail; however, the jail had nothing on Hoffman and told him to buzz off. I finally contacted Broome and he came by my office. He had the paper work on Hoffman in his back pocket and explained to me that the boy was trying to be cute as he had opened a bar in his zone and put it off limits to Broome, etc. He demanded money which Hoffman and I refused to pay. We thereafter taped Broome and passed out copies of the tape to

the Richmond County Property Owners Association, etc. One of the tapes fell into Richard Allen's hands and he saw a chance to get me. He and Jack Smith sent the G. B. I., the F. B. I., and a man from each of their offices to arrest me. They carried me to the Federal Building and told me to confess for trying to bribe a police officer, that Broome had confessed, and that the F. B. I. had the case locked up. I told them the C.B.I. had them all locked up. They looked at me like I was crazy and asked me what the C. B. I. was; whereupon, I told them it was the citizens bureaus of investigation. They looked startled and embarassed as I went on to tell them how we made the tapes and passed them out and that apparently some body slid them one without giving them a background on it all to make a fool out of them which they were. Red faced and mad they locked me up and I posted bond. Needless to say, the matter received wide publicity. Later, deputies caught me in a nightspot, worked me over, and then offered to drop the charges if I would help Broome. I declined and I was arrested again with wide spread publicity. When he tried the case in State Court, the jury found me not guilty in 5 minutes. When Allen decided to try Broome, he sent me word that he wanted my help. I refused and he lost the Broome case. After that, he quietly dropped the charges against me but whereas the arrest was on the front page where everybody could see it, the dismissal was with the obituary section in a side spot of the paper.

(d) that this day and time, it is incredible to think that people would confess on paper that they are abusing their office and rigging a case. Yet this is what precisely has happened in the case of Hicks, et al Vs. the First

National Bank & Trust Company of Augusta. We filed a suit against the bank 5 years ago for three million dollars. The facts are simple. Hicks and Daughtry formed a partnership to run Unity Supermarket. Hicks borrowed $30,000 from the bank for his share of the purchase price and even the bank has admitted that it was a personal debt of Hicks. The book keeper worked a clever scheme through the bank and cashed checks totalling around $54,000.00; however, mysteriously, the bank did not require him to show identification or endorse the back of any of the checks made payable to the Unity Supermarket even though he knew no one in the bank and even though Hicks and his partner had a contract with the bank that only they could present pay items for payment. At the same time, the book keeper kept a set of books showing the Unity ahead $54,000. When it came time for Hicks to pay his $30,000 note, he discovered he was broke. The bank foreclosed on his *personal note* but at the same time wiped out the partnership, which was a legal entiety, and Mrs. Doughtery the other partner. All in all, over $250,000.00 worth of property was sold behind the scenes to satisfy the $28,000.00 personal debt of Hicks. After three years of bank stalling, we placed the matter on the trial calendar at which time Pat Rice said to me that he was not going to have his bank getting bad publicity and was going to try the case in auditor proceedings. It didn't matter that the proceedings were illegal and he and Judge Fulcher commenced them. We filed a motion to discontinue them which was denied by Judge Pierce. We clobbered them in the proceedings and then filed a second motion to discontinue them and after much delay caused by Rice and Judge Fleming, we went before Judge Fleming who refused to hear the facts or rule on the motion but

bore down on me. We tried to explain to him that Judge Fulcher had since denied that they were his auditor proceedings; however, that fact and the fact that Judge Pierce said they were not his damn proceedings all fell upon deaf ears. A lawyer we had helping us in the case from Macon got out of the case and told me that I had problems with the judges and that they had decreed among themselves that this case would not go to trial or that I could not practice law. We have submitted the matter to the Judicial Qualifications Commission in Albany, Georgia. As a side note, it is curious to note that instead of the bank making the book keeper a third party defendant as they should have, they made him a witness of theirs with Pat Rice saying that Richard Allen had given him immunity; however, from his testimony you would have thought he was our witness. Yes, another back fire which has caused them to hate me more in order to cover their own rig incompetence.

(e) that so depressed had I become over the fact that no known authority could deal with some of the unethical locals, I decided to write a book in order to bring pressure on those at the Bar who professed to be pillars of the community to correct the situation. After written communication with a publisher in New York, I was summoned to Chicago for a conference on what they described as a dynamite manuscript. Upon my arrival in Chicago, I was met at the Airport by two men professing to be connected with the F. B. I. They requested a conference and we adjourned to their car. They shut of the radio after reporting their location and laid on me the following which is condense here, to wit:

(1) they said that my manuscript had been evaluated and that they were particularly interested in the vote buying schemes of Mama Bird Bob Best as it fit something they were working on. They went on to say that it was a matter of time before the gang in Augusta tagged me for good and that I had already beat the odds three times over and was on borrowed time. They went on to say that they wanted me to delay the book and return to Augusta, go to court, and prove that the Black block vote had judicial immunity. We discussed much and then they told me of a tape that they had accumulated at great expense and sacrifice. They had a portable recorder and offered to play it. The following is a part of the tape which will be hereinafter explained and which was purportedly a conversation between Marshal Stalin and President Roosevelt using interpreters at Casablanca Africa in 1943, to wit:

Stalin: "... As you Americans say, you have the only game going in town, yet you offer Russia to be equal partner. This difficult for Generals to understand. They say we not play, then this Mr. Roosevelt he take away the mounts, parts, the spam, all go to American General McArthur with no second front and in short time, the German predictcament ... it become a Russian predictcament. This is there. It makes Generals difficult ..."

Roosevelt: "... no, no, no, no. We are allies committed to the total destruction of all enemy forces. There has to be mutual trust. I have explained this time and time again. I have shown our good faith."

Stalin: "Yes but I have also explained that Joe is not a one way system. I am here. I have co-

operated fully. Russia has lost many sons. Many more will join them. People suffer. This supply not unlimited. Generals say watch your pocket when you speak with Mr. Roosevelt. You have extra generals. We are limited."

Roosevelt: "Come now, you are fudging. Why this sudden worry about the concern of parties who have not been a part of our dealings thus far. Time only permits you and I to make arrangements."

Stalin: ". . . This again confusing for generals. They say American system is three way system but this Mr. Roosevelt says it is a one way system in the front and a three way system on the paper. Generals not students of American system. They ask how Mr. Roosevelt deal for the one way system when American people, American Generals, American news paper people, still believe America is a three way system? This make things hard for Joe. Adds to difficulties."

Roosevelt: ". . . You will never understand our system. I don't even understand it. I use it to get things done. We pick the judges, we pick the prosecutors, we pick the congressmen, etc. and we soon have a one way system. It has to be that way because this other gang is always picking at our heels. We have to stick together. Most Americans never know whats going on. They have selected me to decide for them. Can't you see that?"

Stalin: ". . . Joe has always seen that. You have taught Joe much. Yet you ask Joe to make arrangements that only Joe, his Generals, you and whomever you choose in the one way system know of. This not on paper. Generals say bad business. We dealt in good faith with Germans on paper and many Russians die, take many years to rebuild homeland, and now you ask me to go on

word to forget paper while at the same time, German police spread lies to my people that American and German soldiers will fight Russians. You know of this. I have made it clear."

Roosevelt: "Rubbish, rats, and all that! We are going in circles. Were it not for Mr. Roosevelt, as your generals call me, Joe and them would be with the Czar this very moment. I have bent over backwards. I have two wars going on. My enemies pick at me daily. The press hounds me. I have problems, problems, problems. I have carefully decided every known and unknown variable. Time does not permit explanation of the mall. I live in constant danger of one of my generals popping into my office and saying whats going on for real. You must tell me whether your in or out and if your in, then you must get your system straight. Your system can stop and go on a dime after shifting grar. My system is not like that. I have to make it appear that I'm within the system. I can't give an opening."

Stalin: ". . . Joe is friend. Joe understand friend has difficulties. Russia indebeted to friend. Russia help friend get his Blacks to right spot. Yet Generals say, America . . ."

Roosevelt: "I told you to never mention that. Cease it. You should know walls have ears. I must consider such a slip inexcusable and a breach. What was on the end of that? What else is it?

Stalin: ". . . America so powerful in so short time. American people cannot be far stupid. My people come out of one bag right into another. My Generals say we go beyond frontier. This Russia not do for long time. This we do for friend Mr. Roosevelt. We extend our supply lines . . . . we stretch out where always the enemny stretch out. Then allies turn Germans, poles, all on us. Send many many planes, tanks, soldiers, and then allies

beat Hitler and Communist at same time which make Joe fool like Szar and many who follow. This make sleep difficult. Yet Russia wants to help friend. Russia word good. It is true Russian power not like American power. All of this makes worse since the people not in the one way system not like the Communist or Joe which American newspapers make clear."

Roosevelt: "Your saying its a set-up. Thats what your saying. Rubbish. Of all things. This is incredible. Absolutely ridiculous. Absurd and all that. You don't appear grateful."

Stalin: "Mr. President. Just some guarantee for the generals. They say you die, Russia out the limb. Joe fed to the bear. Trust is most difficult in the ranks. Hard to die for as many will."

(2) that the above was not all that is recorded on the tape; however, for purposes of this instrument, the above is sufficient.

(3) that upon inquiry, I was told that the Germans invented the tape recorder, that the British stole it from the Germans, that the Americans swaped for it, and then gave it to the Russians who made good use of it unknowingly at Casablanca.

(4) that I was asked whether or not I knew of some self styled general in Harlem back in the twenties who had a following of 6 million blacks and whose goal was to tear America down to the ground at the voting booth and then go home to Mother Africa; however, I didn't know of such and was told to research it later.

(5) that I made it clear to the men that I had many Black friends and that this was confusing to me. They

told me that Mother Africa was the place on the tape that said spot. They said that the fall of Africa into the hands of the Communist would doom America and that the Russians would not let American Blacks back into Africa. They further told me that John Kennedy had called off the African deal and was eliminated.

(6) that we discussed many things; however, it soon became clear that resort to any civillian agency would be useless. They said that if I could challenge the Black block vote in court and demonstrate to the Army that it had immunity and what damage it was causing all over, that the Army would have to take note. They further said that what I had written had convinced them that I could lay it out in a legal case to the Army which was what had to be done. Obviously, no U. S. Attorney, etc. would take on such a job.

(7) that proving the Black block vote variable existed, what purpose it existed, and what it was doing was my job if I accepted. We set up a contact procedure so that when, and if, I concluded legally that we had struck pay dirt, I could be given the green light to forward my part, conclusions, evidence, law, etc. to men in the Army who had been found to be unbribable by them.

(8) That upon my return to Augusta, I found the Richmond County Property Owners Association deeper involved in a hazzle with the Black block over whether or not taxpayers money could be used to promote a Black Festival. We made our attack there.

(9) that we ran head on into Robert Daniel, who was then the highest price paid part time parasite on the public utterly incompetent county attorney in the U. S. For

months, we deliberately begged the county, Blacks, Daniel, to do right but all met with rig, rig, rig, and rig. At one point, Ira Davis sent a letter to the President of the Augusta Bar and asked for an investigation as to how Daniel could charge the county $25,000.00 for working on the colliesum project when it would have taken him 17 weeks at 40 hours per week to make such at the regular fee scale. If Daniel had worked 17 hours on it, it would have been a miracle. The President of the Bar just ignored Davis' letter and many lawyers began to talk up that Davis was nuts which was nothing knew for them to be saying.

(10) that during our litigation, a grand jury was rigged to say that the taxpayer supported Festival was a legal expenditure under the Federal Revenue Sharing Act; however, the only problem was that such *was a question of law strictly reserved for the courts.*

(11) that we filed suit to undo the grand jury rig; however, the judge before whom it was to be heard openly stated up on the hill in front of a member of my church who reported it to me, "Watch me put the zig to them."

(12) that we reported to the Herald that the rig was on and wrote in our pleadings, as amended, that the rig was on all of which caused the judge to just grin and look at the ceiling and then proceed to rig the case.

(13) that during this time, Harold Tiller put local attorney McDonal Haynie and Claude Hill up to suing the Property Owners Association in an attempt to get their membership list and oust Davis as President; furthermore, we filed papers before the court requesting protection for a county employee who overheard Commissioner Harold

Tiller say in part over the phone, "Pay Haynie whatever he wants I want Davis out." Yet again, the court just grinned and ignored that plea, and proceeded to entertain Haynie and his nut-harassment suit, and permitted him to run Davis, me, and others all over town for depositions and useless purposes.

(14) that after the aboye rigs were complete, we decided to move into the federal court. The real attack in our pleadings was aimed at the fact that the United States Constitution did not permit everyone to vote without qualifications of some sort and that President Carters' show up and vote proposition was absurd; furthermore, in other counts *we questioned a long list of what appeared to be flim flam projects (Congressional Acts) and hand out games that were gobbling up billions of taxpayers money that could be used for national defense.* I will not go into the details here but we were rigged out of the federal court to as we were reportedly making people in high places nervous but about a week before the rig, I predicted it to General McKnight of Fort Gordon as I had become convinced that we had hit pay dirt on the Black block and it was time to bring the Army into the picture.

(15) that I was thereafter told that my life was worth ten cents and after discussing the matter with Sgt. Brown of Fort Gordon and sending a summary of the situation to General G. S. Patton by courier, I went to Macon, Georgia to see about enlisting; however, after discussion with a Sgt. there, I made arrangements and did in fact over a six month period, visit the States of Alabama, South Carolina, Mississippi, Tennessee, and the City of Washington, D. C. and the cities (two or three) in the other States in addi-

tion to Atlanta, Sparta, Macon, Savannah. Louisville, in Georgia. In them all, I found a strong solid Black block vote that had existed for some time and which had resulted in all judicial and police authority in each locale coming under the dominance of a few at the expense of all others.

(16) that I then spent two months in the library researching the situation during which I mailed numerous communications to General Patton said communications sometimes being as many as three a day and extending over a period of a year or better.

(17) that many many factors were submitted as my part; however, they all pointed conclusively to one thing and that was that Africa, not Europe, was the target of the Communist and had been for some time. Additionally, since the Black block was highly organized and solidified in America and supported by politicians who had over a period of time voted to cut national defense in lieu of flim flam projects and hand out games to woo the Blacks, it conclusively appeared that the U.S. Army had been had and further *had a right to know it.*

(18) that any statement under, or without oath, differing from any of the above that I may, or may not, have made in the past is false and was made under threat of this gang who seemed to get bolder after Governor Jimmy Carter stated on T. V. in 1973 that Augusta had socially accepted crime; moreover, this gang had suceeded in causing me to have a nervous breakdown some years back but I came out of it.

(19) that since slander, beating me up, framing me, and threats have failed, it appears that the modern thing

has been to steal, mess up, and ruin my cases all wide open and right in front of the Bar some members of which tell me when I inform them of what they are doing, that I tried to mess up their play ground and that I have got to re-establish myself.

(20) that I have heretofore informed Maj. Gen. G. S. Patton that I would take a poligraph on all of the above and accept whatever punishment was the worse if any of it turned out to be false.

(21) that the above project has been time consuming and expensive in more ways than one; however, the gang does not understand loyalty to the Republic so they will drive themselves nuts trying to figure the angle or whose after them.

(22) that all of the above is the tip of the ice berg of what has been written over two years ago and what appeared in the press years ago and all of which elementary examination can verify by an honest authority truly seeking the truth.

CONCLUSIONS

(A) That either President Roosevelt deliberately babied the Communist to a position of world power *or* that with the A-Bomb up his sleeve, he was setting the biggest trap in the history of warfare for the Communist by luring them far from their homeland to be taken by a far superior mobile allied force accompanied by an over whelmingly superior air force and Navy but which back fired on him at his death since he was obviously the only one knowing of the trap at the time if it in fact existed;

furthermore, considering the evidence in the library, especially the comments of generals and fighting men on the ground from both the German, American, British, etc. side, the evidence is conclusive that Soviet Russia was never in *reality* an equal partner with the allies on the ground despite what the paper work and historical writings might say to the contrary.

(B) That the line down Germany amounted to extortion by the Russians who threatened to tell the world, and back it with tapes, that it was President Roosevelt who gutted the German people and subjected them to plunder by the Russians *or* that it was drawn in accordance with a master plan to have the Communist free Africa of all Colonial and White rule; after which, it could be delivered to the Blacks.

(C) That the proposition that one man equals one vote is a fraud as it was conclusively found on the ground that were such made the policy in Africa, the Blacks would vote for all the Whites to do all the work and then confiscate their properties if they refused; furthermore, that the drafters of the U. S. Constitution clearly were of the opinion that the right to vote was a privilege accorded only to those persons of responsibility, integrity, trustworthiness, and loyalty to the Republic none of which can be true of millions of people who constantly elect White trash to office and who in turn fund year after year flim flam projects, hand out games, welfare, food stamps, etc. with money that could have opposed the Communist in Africa.

(D) That undesirable elements have gained control of the Black block in America (organized crime-communist)

as is evidenced by American retreat around the world since World War II and especially, since President Carter took office.

(E) That America has more crime and white collar corruption that any other country in the world and that no country would swap their system of justice for the American system.

(F) That so many members of the Bar and Judicial Branch of Government have become a rubber stamp for political and criminal corruption that the Russians now firmly believe that they are rescuing the American middle class from the lawyers and politicians none of which would bring two cents each at a yard sale according to middle class opinion on the street.

(G) That the Bar has failed to develope talent to protect the public from Banks, special interest, utility companies, political corruption, doctors, consumer frauds, all of which has lead to an air of disgust toward the whole Bar with the over-whelming majority of Americans.

(H) That the two major political parties and their grab all you can games have brutally mutilated the public, flooded communities with criminals both White collar and others, flooded communities with dope, flooded communities with naked books, flooded communities with prostitutes, con games, shams, rip offs, broken homes, divorces, etc. all when added together have firmly convinced the Communist that the American middle class is ready to unite with Blacks, others, in a revolution against all lawyers and politicians.

(I) That while Blacks kill Whites in Africa, Dixie can't be played in Georgia with not a single damnn politician or lawyer saying one word, taxpayers are made to support a Black Festival and other flim flam projects, taxpayers are made to support a human relations commission whose existence confesses Blacks and Whites can not get along, etc. etc. etc.

(J) That the evidence is conclusive that the organized Bar will be the last to see what is happening and will, as in the past, crusify any man who tries to bring it to their attention as most, except McGahee, Goffe, Johnston, Snelling, and a few others, have been branded like a cow by some deal, whore, fix, rig, and no longer can stand up for their oath or the Republic.

(K) That the State Bar of Georgia has absolutely no idea what to do with this report all of which will cost me dearly if I am dumb enough to think that I can still practice law.

THEREFORE, considering all factors, especially those hereinabove set out, I respectfully submit that except for finding counsel to take over the matters that I have pending before Superior Court Judges Fleming, Pierce, and Fulcher and concluding what matters I have before the Honorable John F. Hardin, I am resigning from the legal profession and the practice of law; furthermore, I am, besides those names below shown, forwarding a copy of this instrument to some thirty of my friends, who have followed my career closely, with a request that they make a copy, place it in a plain white envelope, with no return address, and send it on to a trusted friend of theirs with instructions that said friend do likewise all of which will

finally give me the hearing that my own profession has thus far denied to me before the press and public.

DATED, this the 22nd day of June, 1978.

/s/ Bobby Gay Beazley
Bobby Gay Beazley
Citizen and Patriot

Sworn to and subscribed to
before me this the 22nd
day of June, 1978.

/s/ Willie L. Kennedy
Notary Public, Richmond County,
Georgia.

cc: Maj. Gen. G. S. Patton

cc: Mr. Jack E. McGahee

cc: The Honorable William A. Goffe

cc: Mr. Frank Adams

cc: Mr. Ira Davis, Jr.

cc: Blind copies.

APPENDIX 2

SUPREME COURT OF GEORGIA

Atlanta, August 31, 1978

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

In re: BOBBY G. BEAZLEY

Upon consideration of Mr. Beazley's "extraordinary appeal", filed in this Court with refernce to the allowance of his withdrawal from the State Bar of Georgia, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA,

I certify that the above is a rue extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Joline B. Williams, Clerk.

APPENDIX 3

In the Supreme Court of Georgia Decided Apr 30 1981

37383. BEAZLEY et al. v.

STATE BAR OF GEORGIA et al.

Judgment affirmed without opinion pursuant to Rule 59. All the Justices concur.

APPENDIX 4

SUPREME COURT OF THE UNITED STATES

No. 81-5004

Bobby G. Beazley,

Petitioner

v.

State Bar of Georgia, et al.

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Georgia, No. 37383.

ON CONSIDERATION of the petition for a writ of certiorari herein to the Supreme Court of Georgia.

IT IS ORDERED by this Court that the said petition be, and the same is hereby, denied.

October 5, 1981

Justice O'Connor took no part in the consideration or decision of this petition.

A true copy ALEXANDER L. STEVAS
Test:
Clerk of the Supreme Court of the United States
By /s/ Francis J. Colson
Chief Deputy

APPENDIX 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

BOBBY GAY BEAZLEY,

Plaintiff

V.

CIVIL ACTION
NO. 282-128

THE STATE BAR OF GEORGIA,

Defendant

ORDER

(March 14, 1983)

I. *Factual Background*

In June of 1978, plaintiff, Bobby Gay Beazley, sent to defendant, The State Bar of Georgia, a 34-page notarized statement entitled "Report to The State Bar." The "report" detailed what plaintiff perceived as a Communist plot to take over the Government of the United States and gain dominion over the world. In apparent exasperation with the legal profession for its failure to perceive and respond to the Communist threat, plaintiff, on the last page of his report, informed the State Bar that he wished to resign "from the legal profession and the practice of law."

In response to plaintiff's report and resignation announcement, defendant contacted the Superior Court of Richmond County to request that plaintiff's name be stricken from membership in the State Bar of Georgia. On June 26, 1978, the Honorable John F. Hardin, Senior Judge of the Augusta Judicial Circuit, signed an order

striking plaintiff's name from the rolls of members of the legal profession in the State of Georgia.

Plaintiff then filed an "extraordinary appeal" to the Supreme Court of Georgia, alleging among other things that he had attempted to withdraw his resignation and that his name was stricken from the rolls even though defendant knew that he no longer wished to resign. On August 31, 1978, the Supreme Court of Georgia issued the following order:

> Upon consideration of Mr. Beazley's "extraordinary appeal", filed in this Court with reference to the allowance of his withdrawal from the State Bar of Georgia, it is ordered that it be hereby denied.

On April 30, 1980, plaintiff filed suit against the State Bar of Georgia in the Superior Court of Fulton County, Georgia. In his original complaint and subsequent amendments, plaintiff sought reinstatement as a member of the bar and the payment of monetary damages. Plaintiff charged that defendant's actions in removing him from the rolls of practicing attorneys and in failing to reinstate him upon request violated the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. After a hearing on motions for summary judgment filed by both parties, the Superior Court of Fulton County granted defendant's motion for summary judgment on October 20, 1980. Plaintiff appealed to the Supreme Court of Georgia, and on April 30, 1981, the Supreme Court unanimously affirmed the summary judgment in favor of the defendant. Plaintiff applied to the United States Supreme Court for a writ of certiorari, but that petition was denied on October 5, 1981.

On June 24, 1982, plaintiff filed a complaint in this Court against the defendant. Once again, plaintiff charges that the State Bar of Georgia violated his constitutional rights when it had him removed from the rolls of practicing attorneys and when it refused to reinstate him upon his request. The case is presently before the Court on the State Bar's motion for summary judgment. The defendant asserts the following grounds for its motion:

1. the prior judgments in the state courts are *res judicata* and they bar plaintiff's present action;

2. plaintiff's suit is barred by defendant's immunity under the Eleventh Amendment;

3. defendant is not a "person" subject to suit within the meaning of 42 U.S.C. § 1983;

4. no injunction against defendant can provide plaintiff with the relief he seeks because defendant has no power to license or admit persons to the practice of law;

5. plaintiff's request for relief is equivalent to an action for mandamus against the state courts, which this Court is not empowered to issue;

6. on the principles of consent, waiver and estoppel, plaintiff is barred from challenging his own voluntary withdrawal from the practice of law; and,

7. plaintiff's complaint, as amended, fails to state a claim upon which relief can be granted.

For the reasons discussed below, the Court has concluded that defendant's motion for summary judgment should be granted.

II. *Application of Res Judicata*

The prerequisites for the application of the doctrine of *res judicata* in this Circuit have been specifically determined:

> For a prior judgment to bar a subsequent action, it is firmly established (1) that the prior judgment must have been rendered by a court of competent jurisdiction; (2) that there must have been a final judgment on the merits; (3) that the parties, or those in privity with them, must be identical in both suits; and (4) that the same cause of action must be involved in both suits. *Wasoff v. American Automobile Ins. Co.*, 451 F.2d 767 (5th Cir. 1971). If these elements are established, then the judgment or decree upon the merits in the first case is an absolute bar to the subsequent action or suit, not only in respect of every matter which was actually offered and received to sustain the demand, but also as to every ground of recovery which might have been presented.

Stevenson v. International Paper Co., 516 F.2d 103, 108-109 (5th Cir. 1975). *See also Brown v. Felsen*, 442 U.S. 127, 60 L.Ed.2d 767 (1979); *Ray v. Tennessee Valley Authority*, 677 F.2d 818, 821 (11th Cir. 1982); *Gregory v. Mitchell*, 634 F.2d 205, 206 (5th Cir. 1981).

Plaintiff does not contend that the Superior Court of Fulton County lacked jurisdiction to render the judgment it entered on October 20, 1980. Plaintiff does contend that the Supreme Court of Georgia lacked jurisdiction to hear the "extraordinary appeal" which the Supreme Court denied on August 31, 1978. If this Court's decision were based on the *res judicata* effect of the Supreme Court's 1978 order, the question of the Supreme Court's jurisdiction to enter that order would clearly be relevant. This Court's present decision is not, however,

based on the *res judicata* effect of the 1978 Supreme Court order. Rather, this Court looks to the 1980 decision of the Fulton County Superior Court and the Georgia Supreme Court's 1981 affirmance of the Superior Court decision. With respect to these latter two decisions, the plaintiff does not challenge the jurisdiction of the deciding courts.

Similarly, plaintiff does not contend that the parties to the present suit differ in any significant way from the parties involved in the Fulton County action. Thus, neither the jurisdiction of the prior court nor the identity of the parties is in issue here. The two elements of *res judicata* that *are* in issue are the question whether the Fulton County decision was a final judgment on the merits and the question whether the cause of action asserted in the present case is the same cause of action that was pursued in the Fulton County case.

The Fulton County decision was an order granting summary judgment to the defendant. Normally the granting of summary judgment is a final decision on the merits. 6 *Moore's Federal Practice* ¶ 56.03. In *Summer-Minter & Associates, Inc. v. Giordano,* 231 Ga. 601, 203 S.E.2d 173 (1974), the Georgia Supreme Court stated, "A party against whom summary judgment has been granted is in the same position as if he suffered a verdict against him. *Chandler v. Gately,* 119 Ga. App. 513, 522 (167 S.E.2d 697); *McKnight v. Griffin,* 118 Ga. App. 168 (1) (162 S.E.2d 743); *Dykes v. Hammock,* 116 Ga. App. 389 (1) (157 S.E.2d 524); *Montgomery v. Pickle,* 108 Ga. App. 272 (3) (132 S.E.2d 818); *Scales v. Peevy,* 103 Ga. App. 42, 46 (118 S.E.2d 193). Thus, it is evident that an adjudication on summary judgment is an adjudication on

the merits of the case. *See Pickett v. Paine,* 230 Ga. 786, 797 (199 S.E.2d 223)." 231 Ga. at 604.

The Georgia Supreme Court has recognized, however, that the term "summary judgment" is sometimes incorrectly applied when a court actually rules on a plea in abatement rather than on a plea in bar. In *National Heritage Corp. v. Mount Olive Memorial Gardens, Inc.,* 244 Ga. 240, 243, 260 S.E.2d 1 (1979), the court held that, when *res judicata* is presented as a defense based upon a prior summary judgment, the court considering the plea of *res judicata* should examine the underlying basis of the former summary judgment. "If that summary judgment actually was an adjudication on the merits (a plea in bar, or otherwise on the merits), the plea of res judicata should be sustained. However, if examination shows that the summary judgment actually was not an adjudication of the merits (a dilatory plea, etc.), the res judicata plea should be denied." *Id.* Thus, if in the present case it appears that the Fulton County Superior Court granted "summary judgment" on grounds that did not actually go to the merits of the case, defendant's present invocation of *res judicata* would be insupportable.

Plaintiff contends that the basis of the Fulton County grant of summary judgment was a determination that plaintiff's claims in that court were barred by the *res judicata* effect of the 1978 Georgia Supreme Court order denying plaintiff's appeal of his removal from the rolls of practicing attorneys. Additional Legal Memorandum in Support of Plaintiff's Motion for Summary Judgment, p. 2 (filed September 24, 1982). Plaintiff further contends that such an application of *res judicata* amounted to a determination by the Fulton County Superior Court that

it "was without jurisdiction to hear the matter." Response to Defendant's Brief Dated November 22, 1982, pp. 2-3 (filed November 29, 1982). Plaintiff attempts to support these contentions by supplying this Court with excerpts from the transcript of the Fulton County Superior Court's hearing on the motion for summary judgment.

Although this Court concedes that the Fulton County court orally explored the possibility that the prior decision of the Supreme Court barred further adjudication of the matter, this Court cannot conclude from the excerpted transcript that the Fulton County court's grant of summary judgment was, in fact, based on the application of *res judicata* principles. However, assuming without deciding that the Fulton County summary judgment resulted from the application of *res judicata,* this Court nevertheless believes that plaintiff in incorrect in asserting that such a decision does not reach the merits. Summary judgment based on *res judicata* grounds does not constitute a determination of lack of jurisdiction, as plaintiff apparently believes. *Res judicata* in Georgia is a plea in bar, not a plea in abatement. *Galloway v. Merrill,* 213 Ga. 633, 100 S.E.2d 443 (1957); *Hill v. Cox,* 151 Ga. 599, 602, 107 S.E. 860 (1921). Thus, the granting of summary judgment on the basis of *res judicata* is not a determination that the presiding court lacks jurisdiction but, rather, that the plaintiff has no enforceable cause of action. Thus, the Court concludes that there is no evidence that the Fulton County Superior Court misapplied summary judgment terminology to a plea in abatement. Absent some contrary indication, this Court must conclude that the summary judgment granted by the Fulton County Superior Court constituted a final decision on the merits. *See Rose Hall,*

Ltd. v. Chase Manhattan Overseas Banking Corp., 494 F.Supp. 1139, 1147-1148 (D.Del. 1980) (applying Georgia law).

Having determined that a final judgment was reached by a court of competent jurisdiction in a prior case involving the parties now before the Court, the Court turns finally to the issue whether the plaintiff's present claims constitute the same "cause of action" that he pursued in the Fulton County case. According to the Court of Appeals for the Eleventh Circuit speaking in *Ray v. Tennessee Valley Authority, supra:*

> [t]he principal test for determining whether the causes of action are the same is whether the primary right and duty or wrong are the same in each case. *White v. World Finance of Meridian, Inc.*, 653 F.2d 147, 150 (5th Cir. 1981); *Commercial Box & Lumber Co., Inc. v. Uniroyal, Inc.*, 623 F.2d 371, 374 (5th Cir. 1980); *Kemp v. Birmingham News Co.*, 608 F.2d 1049, 1052 (5th Cir. 1980). As the former Fifth Circuit observed in determining whether the causes of action are the same, the substance of the actions, not the form, controls.

Id. at 821. *See also Midway Youth Football Ladies Auxiliary v. Strickland*, 449 F.Supp. 418 (N.D.Ga. 1978); *Brown v. Georgia Power Co.*, 371 F.Supp. 543, 546 (S.D.Ga. 1973), *aff'd* 491 F.2d 117 (5th Cir.), *cert. denied* 419 U.S. 838, 42 L.Ed.2d 65 (1974); *Cooper v. Public Finance Corp.*, 146 Ga. App. 250, 251-253, 246 S.E.2d 684 (1978).

The right allegedly violated is the same in both the Fulton County action brought by plaintiff and in the present action brought by plaintiff; *viz.*, the right to continue practicing law in this state. *See Ray v. Tennessee*

Valley Authority, supra at 821-822 (concerning the right of continued employment); *Brown v. Georgia Power Co., supra* at 546 (concerning the right to own and hold property free from unlawful interference). In the Fulton County case, plaintiff complained of two separate wrongs allegedly committed by the defendant. First, plaintiff focused on the State Bar's alleged wrongful removal of him from the rolls of practicing attorneys. *See* Complaint, Civil Action C-62397 (Sup. Ct. Fulton County, filed April 30, 1980); First Amendment to Original Complaint, Civil Action C-62397 (Sup. Ct. Fulton County, filed July 7, 1980). Later plaintiff turned to defendant's alleged refusal to reinstate him. *See* Amendment to Complaint, Civil Action C-62397 (Sup. Ct. Fulton County, filed October 20, 1980).

In the present suit, plaintiff once again alleges that his right to practice law in this state has been violated by defendant's removal of his name from the rolls of practicing attorneys and by defendant's refusal to reissue plaintiff a license to practice law. In both this case and the Fulton County case, plaintiff has advanced theories of relief based on the due process and equal protection clauses of the United States Constitution, as well as theories based on various provisions of the state statutory and common law. This Court concludes that the same rights and the same wrongs alleged in this case were alleged in the prior case heard in the Fulton County Superior Court and appealed to the Supreme Court of Georgia. Accordingly, the Court concludes that the causes of action pursued in the present case have already been advanced and adjudicated in the state courts. Thus, the doctrine of *res judicata* bars plaintiff's suit in this Court, "not only

in respect of every matter which was actually offered and received [in the Superior Court of Fulton County], but also as to every ground of recovery which might have been presented." *Stevenson v. International Paper Co., supra* at 109.

CONCLUSION

Based on the foregoing analysis, the Court concludes that plaintiff's suit in this Court is barred by the doctrine of *res judicata*. Accordingly, defendant's motion for summary judgment should be, and is, hereby GRANTED. Having discerned merit in defendant's *res judicata* argument, the Court finds it unnecessary to consider any of defendant's other asserted grounds for summary judgment. The Clerk of Court is directed to enter an appropriate judgment dismissing the complaint with prejudice.

SO ORDERED, this 14th day of March, 1983.

/s/ Anthony A. Alaimo
CHIEF JUDGE, UNITED
STATES DISTRICT COURT
SOUTHERN DISTRICT
OF GEORGIA

APPENDIX 6

NO. D-967

IN THE SUPREME COURT OF
THE UNITED STATES
OCTOBER TERM, 1983

BOBBY G. BEAZLEY,

Petitioner

vs

THE STATE BAR OF GEORGIA,

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

For Petitioner:

Bobby Gay Beazley, Pro Se
1557 Gordon Highway
Suite D
Augusta, Georgia 30906
1-404-736-7141

i

QUESTIONS PRESENTED FOR REVIEW

A. WHETHER OR NOT THE STATE BAR OF GEORGIA (ASSOCIATION) ACTING IN CONCERT WITH A SUPERIOR COURT JUDGE IN RICHMOND COUNTY, GEORGIA CAN BY SUPERIOR COURT ORDER REMOVE PETITIONER FROM THE RANKS OF PRACTICING ATTORNEYS IN GEORGIA AND AS AN ACTIVE MEMBER OF SAID ASSOCIATION ABSENT ANY STATUTORY, OR OTHER LEGAL AUTHORITY, AUTHORIZING SAID REMOVAL, AND IN A MANNER THAT VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES AND THE CIVIL RIGHTS OF PETITIONER?

PARTIES TO THE PROCEEDINGS

THE PARTIES TO THE PROCEEDING ARE: BOBBY G. BEAZLEY: AND THE STATE BAR OF GEORGIA.

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CONSTITUTION

United States

Amendment XIV 1

OPINION BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AFFIRMING THE RULING MADE BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, BRUNSWICK DIVISION, AND THE DECISION DENYING PETITIONER'S MOTION FOR A REHEARING ARE PRODUCED AS APPENDIX A, B, C, HERETO.

JURISDICTION

THE DECISION APPEALED FROM WAS DECIDED ON SEPTEMBER 14, 1983 AND A MANDATE ISSUED ON OCTOBER 7, 1983; ALSO, THE PETITION FOR A REHEARING OF THAT DECISION WAS DENIED ON FEBRUARY 27, 1984. THE JURISDICTION OF THIS COURT IS INVOKED UNDER U.S.C. SEC. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides:

"All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Appellant filed a cause of action below alleging that he had been involuntary, illegally, and wrongfully removed as a member of the defendant appellee; also, that the defendant association was illegally maintaining a no-method of reinstatement for appellant. (R1-10), (R-395). Jurisdiction was sought below under 42 U.S.C.A. S 1983; AMend. 14, *.S.C.: Amendment V, U.S.C.: Amendment VIII U.S.C.: Amend 1, U.S.C. (R108-109), (R 176-178), (R-189), (R-202-203).

That in June of 1978, appellant filed a thirty-four page report with the appellee, the objective of which was to get a special master appointed to make inquiry into certain matters. (R-445). That at the time said report was forwarded, the appellee association had only two classes of members for those not under any form of disciplinary proceedings and that being; active and inactive (R-135), (R 180-181), (R-445). That on the last page of the report, appellant stated that he was resigning from the legal profession; however, appellant had no intention of resigning from the legal profession a fact known to the appellee. (R-450), (R-60), (R-99), (R-98), (R-451).

That appellee's agents took out all but the last page of the report, along with its *own* petition to have appellant removed as a member of the appellee, to a Superior court Judge in Richmond county, Georgia. (R504-506). Although appellee had no removal or admitting power, it actually removed appellant as a member before it forwarded its alleged petition to Richmond County, Georgia. (R-445). Appellee contended that its authority to file its alleged petition to have appellant removed as a member was Ga.

Code Ann. S 9-501 which has been declared unconstitutional by the Georgia Supreme Court. (R 529-532), (R 540-542). The Honorable John F. Hardin, Judge of Superior Court in Richmond County, Georgia, granted appellee's alleged petition and entered an order removing appellant as a member of the appellee. (R 503-506). In regard to the alleged petition appellee admitted below:

> ". . . this defendant avers that it did not file a petition in the Richmond County Superior Court but simply forwarded to the Honorable John F. Hardin, plaintiff's voluntary resignation." (R-451).

Appellant had a right to notice and hearing before removal on the validity of appellee's illegal petition but was not given *any* notice of same or afforded a hearing. (R-262), (R-87).

The appellee further admitted below:

> ". . . It is admitted that there is no specific provision in the Georgia Code providing for a Judge of the Superior Court to receive, investigate, or rule on a petition for voluntary resignation from the State Bar of Georgia. (R-44); and
>
> ". . . that the State Bar had received the resignation (report) but had no authority to act upon it." (R-44); and
>
> ". . . Plaintiff apparently considered that his so called report might arouse the legal profession to protect the United States . . ." (R-450).

Below, appellant requested appellee to produce copies of all by-laws, past and present, rules or regulations, past or present, that relate in any way, shape, fashion, or form, to the authority of the appellee to receive, investigate, and

act upon an alleged petition (report) by one of its members not under disciplinary pressure to voluntarily resign his membership in the State Bar of Georgia to which the appellee responded:

"No such documents are in existence." (R-444).

Appellant's thirty-four (34) page report was not verified. (R-612).

Appellee's alleged petition to have appellant removed as a member of the appellee was not filed in the Clerk of Superior Court's Office until an order had been entered removing appellant as a member of the legal profession in Georgia. (R-503), (R-506).

That appellant did not get a chance to explain the report or assert a defense to appellee's alleged petition filed with the Honorable John F. Hardin, Superior Court Judge of the Augusta Judicial Circuit, as the proceedings were opened and closed with the stroke of a pen without notice to appellant, service of a copy of the alleged petition on appellant, or hearing on the merits. (R-510), (R-446). That the first appellant knew of the order directing that he be removed as a member of the legal profession in Georgia was when a representative of the Superior Court Clerk's Office of Richmond county informed him of same. (R-446), (R-449), (R-500), (R-503), (R-508), (R-510), (R-514), (R-99), (R-100).

Appellant thereafter filed a plea of help labeled "Extraordinary Appeal" which was not an appeal necessary to confer jurisdiction on said court which was denied without opinion and which was not reported out in the Supreme Court of Georgia Reports, the Southeastern Reporter, or

any other legal publications. (R-365), (R-61), (R-100), (R-(R 156-165), (R-448).

Appellant filed an equitable petition in the Fulton County Superior Court, the purpose of which was to set the Richmond County Superior Court judgment aside the text of which directed that appellant be removed from the legal profession in Georgia. (R-446), (R-347-359). Appellee responded raising the defense of res-judicata. (R-384), (R156-165), (R-448).

After a brief hearing in chambers during the course of which no evidence was received or merits discussed, the presiding judge granted appellee's motion for summary judgment on the grounds that appellant's equitable petition was barred by the doctrine of res-judicata. (R-384), (R156-165), (R-448).

The appellee answered appellant's complaint below and again raised the defense of res-judicata. (R-13).

On November 9, 1982, the court below entered an order which read in part as follows:

> "Even more crucial is the determination of whether the plaintiff voluntarily resigned from the legal profession or was involuntarily excluded from the practice of law in this State. The voluntariness of plaintiff's departure from the ranks of practicing attorneys is material to the determination of what notice, if any, was due him." and ". . . the court concludes that a trial will be necessary to determine certain matters of fact." (R-475).

Appellee moved for summary judgment below. (R-276-277). Appellant responded. (R-443-452). On March 14, 1983, the court below granted appellee's motion for sum-

mary judgment and dismissed appellant's entire complaint. (R593-603). On March 21, 1983 appellant filed a notice of appeal. (R-607).

The court below granted summary judgment to the appellee on its res-judicata defense and in regard to that defense made the following pertinent comments:

> ". . . Rather, this court looks to the 1980 decision of the Fulton County Superior Court . . ." (R-597); "The two elements of res-judicata that are in issue are the question whether the Fulton County decision was a final judgment on the merits and the question whether the cause of action is the same cause of action that was pursued in the Fulton County case." (R-597);
>
> ". . . the court considering the plea of res-judicata should examine the underlying basis of the former summary judgment. . . . Thus, if in the present case it appears that the Fulton County Superior court granted summary judgment on grounds that did not actually go to the merits of the case, defendant's present invocation of res-judicata would be insupportable." (R-598); "Although this court concedes that the Fulton County Court orally explored the possibility that the prior decision of the Supreme Court barred further djudication of the matter, this court cannot conclude from the exerted transcript that the Fulton County court's grant of summary judgment was, in fact, based on the application of res-judicata . . ." (R-599);
>
> "Absent some contrary indication, this court must conclude that the summary judgment granted by the Fulton County Superior Court constituted a final decision on the merits." (R-600).

Assuming, but not deciding, that it would be ultimately decided that appellee somehow legally exited appellant from the ranks of practicing attorneys in Georgia, appel-

lant plead below that appellee was excluding appellant from the practice of law for reasons that do not have a rational connection with fitness or capacity for the law practice by providing a no-method of reinstatement for appellant; also, that the no-method of re-instatement classification violated the due process and equal protection clause of the 5th and 14th Amendments of the United States Constitution. (R-4).

Appellant filed a motion for judgment on the pleadings below. (R-441).

Appellant contends that the court below erred in applying the res-judicata rule of law in the case sub-judice.

Appellant filed a motion for summary judgment below which was denied. (R-472-475).

REASONS FOR GRANTING WRIT

Under the circumstances of the case sub-judice, before the doctrine of res-judicata could have been properly applied below, appellee had to come forth and show the court below that the Fulton County judgment was rendered by a court of competent jurisdiction; that the Fulton County judgment was *a final judgment on the merits;* that the parties to the matter at bar, or those in privity with them, were identical in both suits; and that the *same causes of action* were involved in both suits. See Wasoff v. American Automobile Ins. Co., 451 F.2d 767 (5th Cir. 1971). Thus, if the same causes of action are present in the case sub-judice, and the Fulton Superior Court made a decision on the merits, which appellant contends it did not, that decision would be a bar to the present suit. See O.C.G.A. S 9-12-42. It is not enough that issue may have been made by the pleadings in the Fulton County action.

Evidence must have been introduced that would have authorized a resolution of those issues by a jury. See Atkins v. Bituminous Cas. Corp., 124 Ga. App. 1, 3 (3, 4), 183 S. E. 2d 1 (1971); National Heritage Corp. v. Mount Olive Mem. Gardens, Inc., 244 Ga. 240, 260 S.E. 2d 1 (1979). Under the law, the res-judicata plea of defense in the matter at bar could only have been maintained as to matters within the scope of the previous pleadings as necessarily had to be adjudicated in order for the previous judgment to be rendered, or as to such matters within the scope of the pleadings as might or might have been adjudicated, but which are shown by alliunde proof to have been actually litigated and determined. See Thompson v. Thompson, 199 Ga. 692, 35 S.E. 2d 262 (1945); Powell v. Powell, 200 Ga. 379, 37 S.E. 2d 262 (1946); Firestone Tire & Rubber Company v. Pinyan, 155 Ga. App. 343, 270 S.E. 2d 883 (1980).

The court below conceded that the Fulton County court orally explored the possibility that the prior ruling of the George Supreme Court on appellant's out of pocket plea of help instrument barred further adjudication of the matter. (R-599). The court below further admitted that a transcript was in existence the whole of which would obviously show conclusively whether or not the presiding judge of the Fulton County Superior Court stated at the brief in chambers meeting that he could not go behind an earlier ruling of the Georgia Supreme Court any way, shape, fashion, or form and whether or not the same presiding judge actually considered the merits and issued a ruling on the merits of the circumstance then before him. It is submitted that it was not the duty of the court below

to gather anything from uncertified excerpts of the existing transcript; however, it was incumbent upon and the duty of counsel for appellee below to provide the court below with a certified copy of the whole short transcript. See Ga. Code Ann. S 6-701; O.C.G.A. S 24-7-20; Ward v. The State, No. 65248 from Supreme Court of Georgia, 300 S.E. 2d 528 (2), (1983). Examination of the text of the subject transcript would have clearly decided the issue of whether or not the Fulton County Court examined evidence, affidavits, or pleadings, heard sworn testimony, and made a determination anew on the merits of the action before him. Since the appellee had the transcript within its reach and omitted to produce it, a presumption arises that the text of the transcript would prove unfavorable to appellee and its res-judicata defense. See O.C.G.A. 24-4-22. It is submitted that appellee did not carry its burden below and show affirmatively that the Fulton County Court made a decision on the merits. See Wasoff v. American Automobile Ins. Co.. 451 F. 2d, 767 (5th Cir. 1971).

It is apparent that there was no trial on the merits in the Fulton County proceedings, except on the merits of the plea of res-judicata raised by the appellee and said judgment does not bar appellant from maintaining the action below. See Wolf v. East St. Louis Lines, 173 F. 2d 393.

Assuming, but not deciding, that appellant was legally exited from the ranks of practicing attorneys in Georgia, the court below erred in dismissing appellant's complaint in its entirety as the text of said complaint presented a distinct new cause of action not theretofore asserted against appellee in any other proceedings. This new action alleged

that appellee was maintaining a new method of reinstatement classification for appellant in violation of the due process and equal protection clauses of the United States Constitution. (R-4), (R 8-9). It is submitted that the equal protection clause of the Fourteenth Amendment prohibits a state from creating a classification which serves no rational purpose or which arbitrarily divides similarly situated people into classes and treats them differently. A State cannot exclude a person from the practice of law in a manner or for reasons that contravene the due process or equal protection clauses of the Fourteenth Amendment. See Pace v. Smith, 248 Ga. p. 730. It is submitted that this argument applies to the appellee association even though it is not a part of the State of Georgia.

The court below erred in denying appellant's motion for summary judgment. (R-59-66), (R-472-475). There was no genuine issue of material fact remaining on the issue of whether or not appellant had notice of the proceedings instituted by appellee to have him removed as a member of the appellee.

Appellant had a right to withdraw the subject report and alleged resignation. See Kinsey v. Florida Bar (Fla.), 195 So. 2d 210. Since the fact remains unrebutted in the record that appellant withdrew the subject report and alleged resignation before same were acted on and before appellee's petition was forwarded to a Superior Court Judge in Richmond County, Georgia, the court below erred in not granting appellant's motion for judgment on the pleadings for this and other reasons. (R-445), (R-450), (R 441-442).

The State Bar of Georgia was created by act of the Georgia Legislature. Ga. Law 1963, p. 70-72. Matters relating to the practice of law, including the admission of practioners, their discipline, suspension and removal, are within the inherent and exclusive power of the Supreme Court of Georgia. See Art. I, SEc. II, Par. IV, Constitution of Georgia 1976. Appellee contends that it and the subject Superior Court Judge in Richmond County, Georgia, removed appellant from the ranks of practicing attorneys in Georgia under former Ga. Code Ann. S-9-501. (R 540-542); however, Ga. Code Ann. S 9-501 was ruled unconstitutional. See Carpenter v. State, No. 38785, 297 S. E. 2d 16, 17. Since the action of the Superior Court of Richmond County, Georgia was not based upon any rules, standards, or regulations of the State Bar of Georgia, as approved by the Supreme Court of Georgia, same was void and appellant is in fact an inactive member of appellee. See Carpenter v. State, supra

The illegal instrument that appellant filed with the supreme Court of Georgia did not confer jurisdiction on said high court as no notice of appeal was filed from the order removing appellant, no record sent up, no briefs, and no decision was issued. See Jordan v. Caldwell, 229 GA 343, 191 S.E. 2d 530 (1972).

The right to practice law after once admitted is to be considered a property right, or which one is not to be deprived without notice and an opportunity to be heard; and there can be no doubt that a court is without authority to disbar or suspend (remove) an attorney sua sponte, without notice and hearing, except for matters occurring in open court and in the judge's presence. See James v. The

State of Georgia, 61 Ga. App. 863; 98 L ed 855, 856. This point of law combined with the Carpenter v. State ruling, supra, leaves little doubt that the proceedings that resulted in appellant's removal were violative of procedural due process and appellant's Constitutional and Civil rights.

PRAYER

WHEREFORE, PREMISES CONSIDERED, petitioner respectively prays that this Honorable Court issue a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectively submitted,

/s/ Bobby Gay Beazley, Pro Se
Bobby Gay Beazley, Pro Se

CERTIFICATE OF SERVICE

I, Bobby G. Beazley, hereby certify that on this 21st day of June, 1984, I served three copies of the foregoing Motion to Proceed in Forma Pauperis, affidavit in support of Motion to Proceed in Forma Pauperis, and petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit upon the respondent State Bar of Georgia by mailing the same to it via the United States Mail, first class, postage prepaid, addressed to it as follows:

State Bar of Georgia
84 Peachtree Street
Atlanta, Georgia 30303

/s/ Bobby G. Beazley
Bobby G. Beazley, Pro Se

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-8217

Non-Argument Calendar

D.C. Docket No. CV282-128

BOBBY GAY BEAZLEY,

Plaintiff-Appellant,

versus

THE STATE BAR OF GEORGIA,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Georgia

(September 14, 1983)

Before FAY, VANCE and KRAVITCH, Circuit Judges.

PER CURIAM:

AFFIRMED. See Circuit Rule 25.

ISSUED AS MANDATE: OCT 7 1983

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-8217

BOBBY GAY BEAZLEY,

Plaintiff-Appellant,

versus

THE STATE BAR OF GEORGIA,

Defendant-Appellee.

Appeal from the United States District Court for
the Southern District of Georgia

ORDER:

IT IS ORDERED that appellant's motion for leave to file petition for rehearing out of time is GRANTED.

/s/ ROBERT S. VANCE
UNITED STATES
CIRCUIT JUDGE

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 83-8217

BOBBY GAY BEAZLEY,

Plaintiff-Appellant,

versus

THE STATE BAR OF GEORGIA,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Georgia

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ON PETITION FOR REHEARING

(February 27, 1984)

Before FAY, VANCE and KRAVITCH, Circuit Judges

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Robert S. Vance
United States Circuit Judge

REHG-4
(Rev. 6/82)

APPENDIX 7

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

October 1, 1984

Mr. Edward S. White
1500 Equitable Building
100 Peachtree St., N.W.
Atlanta, Ga. 30043

Re: Bobby Gay Beazley,
v. State Bar of Georgia
No. 83-7011

Dear Mr. White:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

Alexander L. Stevas, Clerk

Copy sent to Judge Omer W. Franklin 10/8/84.

APPENDIX 8

In the Supreme Court of Georgia

Decided: Nov. 25, 1986

43777. STATE BAR OF GEORGIA v. BEAZLEY.

GREGORY, Justice.

Bobby G. Beazley brought a motion to set aside a 1978 order striking his name from Georgia's roll of attorneys. The trial court granted the motion. We reverse.

On June 22, 1978, Beazley, then a practicing attorney, sent a 34-page document to the State Bar of Georgia. The document detailed what Beazley perceived as corruption in society. Beazley concluded the document by writing he was ". . . resigning from the legal profession and the practice of law. . . ."

Upon receipt of Beazley's document, the State Bar prepared a "Petition for Voluntary Withdrawal from the Practice of Law in the State of Georgia." With Beazley's document attached, the petition was sent to the Superior Court of Richmond County. The State Bar also contends it sent a copy by regular mail to Beazley, but Beazley denies receiving it.

On June 26, 1978, with no service of process on Beazley and without a hearing, a Richmond County Superior Court judge signed an order striking Beazley's name from Georgia's roll of attorneys. Beazley filed an "extraordinary appeal" from the order with this court on July 3, 1978. The appeal was denied on August 31, 1978.

In 1980, Beazley filed a complaint seeking damages and equitable relief in Fulton County Superior Court. The

court granted motions for summary judgment and judgment on the pleadings in favor of the State Bar on October 20, 1980. The judgment was affirmed without opinion by this court on April 30, 1981.

In 1982, a similar suit was filed in the U. S. District Court for the Southern District of Georgia in Brunswick. The State Bar's motion for summary judgment was granted on March 14, 1983. Beazley's appeal to the Fifth Circuit Court of Appeals was unsuccessful.

On January 22, 1984, Beazley filed a motion in Richmond County Superior Court to set aside the June 1978 order as void due to lack of personal and subject matter jurisdiction. The trial court granted the motion and ordered that Beazley be restored to his status as an attorney licensed to practice law in Georgia. The State Bar appeals this decision.

1. The State Bar contends the trial court erred by ruling res judicata was not a bar to Beazley's motion to set aside. We agree.

"A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside." OCGA § 9-12-40. In order for the res judicata doctrine to apply, three prerequisites must be established: (1) identity of parties; (2) identity of the cause of action; and (3) prior adjudication by a court of competent jurisdiction. *Firestone Tire & Rubber Co.*, 155 Ga. App. 343, 345 (270 SE2d 883) (1980). Also, OCGA § 9-12-42 provides the merits of the case must have

been adjudicated for the judgment to be a bar to subsequent action.

In its order granting Beazley's motion to set aside, the trial court found that Beazley had raised the issue of the validity of the June 26, 1978 order in his suits before the Fulton County Superior Court and the U.S. District Court. The trial court concluded res judicata would thus bar Beazley's claims in a subsequent suit against the State Bar of Georgia.

However, the trial court found res judicata could not apply in this latest suit because of a lack of identity between the parties. The court found that the motion to set aside involved an action styled "In Re Bobby Gay Beazley" in which Beazley was the only party. The court held that "strictly speaking" the State Bar is not a party to this action, and thus not entitled to raise the doctrine of res judicata.

(a) We find the trial court erred in not ruling Beazley's action was barred by the doctrine of res judicata.

In his complaint filed in the U.S. District Court, Beazley raised the issues of subject matter jurisdiction and personal jurisdiction by the Richmond County Superior Court regarding its June 26, 1978 order. The district court granted a motion by the State Bar for summary judgment, concluding that the action was barred by res judicata resulting from the prior litigation in the Fulton County Superior Court.

In *National Heritage Corp. v. Mount Olive Memorial Gardens, Inc.*, 244 Ga. 240, 243 (260 SE2d 1) (1979), this court held that "where an order granting a summary

judgment in a prior suit is relied upon in final support of a plea of res judicata in a subsequent suit, the court considering the plea of res judicata should examine the underlying basis of the summary judgment. If that summary judgment actually was an adjudication on the merits (a plea in bar, or otherwise on the merits), the plea of res judicata should be sustained. However, if the examination shows that the summary judgment was not an adjudication on the merits (a dilatory plea, etc.), the res judicata should be denied."

The underlying basis of the U.S. District Court's decision was res judicata. A plea of res judicata is not a dilatory plea, but is in the nature of a plea in bar. *Galloway v. Merrill,* 213 Ga. 633, 634 (100 SE2d 443) (1957). Therefore, the prior adjudication in the district court stands as an adjudication on the merits for the purposes of OCGA §§ 9-12-41 and 9-12-42 and bars this instant action.

(b) We hold the trial court erred in finding the State Bar is not a party to this action capable of injecting the res judicata doctrine.

The term "party" to an action includes all who are directly interested in the subject matter, and who have a right to make defense, control the pleadings, examine and cross-examine witnesses, and appeal from the judgment. *Smith v. Gettinger,* 3 Ga. 140, 142 (1847). See also 67A CJS, Parties § 2, 639-640 (1978). Whether a person is a party to an action must be ascertained exclusively by inspection of the record. See 67A CJS, Parties § 3, 641 (1978); *Small v. Peacock,* 171 Ga. 475, 476 (155 SE2d 754) (Gilbert, J., dissenting) (1930).

The trial court stated in its order the State Bar was invited to participate because of its extensive past involvement with the case and its possession of certain documents and transcripts from previous litigation. From that point, the record discloses the State Bar acted and was treated as a party. It filed an answer responses to Beazley's motions and motions of its own. It was ordered by rule nisi to appear at a hearing and show cause why Beazley's motion to set aside should not be granted. At the hearing, the State Bar introduced exhibits into evidence. The State Bar filed and proceeded with this appeal. All of these actions were undertaken without formal objection by Beazley.

We therefore hold the State Bar is a party in considering the res judicata effect here of previous litigation between the State Bar and Beazley.

2. Because we find this action is barred by res Judicata, we do not reach the issues of subject matter and personal jurisdiction raised in the trial court and presented on this appeal.

Judgment reversed. Marshall, C. J., Clarke, P. J., Smith, Weltner, Hunt, J. J. and Chief Judge Harold R. Banke concur. Bell, J., disqualified.